2008

How to Entrench a De Facto State Church in Russia: A Guide in Progress

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* Associate Professor of Law, University of Tennessee College of Law. The author wishes to extend his sincerest thanks to Natalie Banta, Richard R. Barker, Jacob Briggs, Adam K. Rasmussen, and Michael Thomas for their invaluable research assistance and editorial comments. The author also extends thanks to Professor Cole Durham for his support of this project and for the opportunity to present an early draft of this work at BYU's Annual International Law & Religion Symposium in 2007. This article is dedicated to Noah Leib, with love.

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I. INTRODUCTION

The Russian Orthodox Church's (ROC) assertion of a constitutionally inappropriate—and as this article will argue, unlawful—role in the affairs of state has severely compromised Russia's secular constitutional framework. This gradual but steady erosion of the barrier between church and state in Russia is evidenced by a series of contemporary developments that are inexorably linked to the Church's vision of its traditional place in Russian history. Taken together, these developments demonstrate a consistent and expanding effort on the part of the ROC to insinuate its views and beliefs into official Russian government policy.

Disturbingly, each successive post-communist regime has further enabled this behavior, and there is no indication that the political transition from President Vladimir Putin to his hand-picked successor, Dmitry Medvedev, will change anything. The pattern that emerges from this collusion presents a serious challenge to Russia's constitutional order and to the country's regional and international human rights commitments—chief among these being the right to freedom of thought, conscience, and religion or belief.

Principally, this Article examines the chain of events that has left the ROC poised to continue to expand its influence over government policy under the Putin-orchestrated administration of President Medvedev. It also adds to the growing body of evidence illustrating the deterioration of the rule of law in Russia—particularly the government's cavalier disregard of the 1993 Constitution and its international commitments. For background purposes, Part II of this article will set out the constitutional and political treatment of church-state relations and freedom of conscience under Soviet rule. This discussion will also briefly cover the Church's historical role in

Russian history and help identify patterns in the church-state relationship that remain relevant today.

Part III examines the period of post-Communist tumult wherein both the ROC and the government struggled to redefine relationships with each other and with the Russian people after seventy years of totalitarianism. This section covers the turbulent years of 1990–1997 and considers, *inter alia*, the Church's cementing positions concerning fundamental rights in Russia, its vision of the Church in Russian society, and the significance of Russia's constitutional order. Part IV addresses developments in Russia up until the present day and highlights key behavioral patterns between the ROC and the State, which illustrate both parties' utter lack of regard for the country's constitutional order or its international commitments. This section also reasons that the debate over whether the ROC is or is not a "state church" misses the real issue. Both sides actually benefit by not committing to an "official" state church: the government benefits from the unflagging political support of the ROC's hierarchy and adherents; and the Church retains its institutional autonomy while securing its preferential status above all other religious groups. In this way, the ROC stands as the revered "Bolshoi choir" of religions, itself alone worthy of state promotion and protection.[1] The immediate implications of this *entente* based on mutual self-interest to the exclusion of others are clear: continued constitutional meltdown and flaunting of the rule of law by a government unwilling to live up to its people's vision of Russia or its international commitments, and an emboldened xenophobic *de facto* state church.

1. Metropolitan Kirill of Smolensk and Kaliningrad is the Chairman of the Moscow Patriarchate's External Church Relations Section. Remarks made during a meeting with a delegation of the U.S. Commission on International Religious Freedom (USCIRF), Moscow, June 22, 2006 (notes on file with author). Kirill drew a similar analogy in a speech at the enlarged meeting of the leading officials of the Central Federal District, Kursk, 21 July 2004:

> It goes without saying that the creative contribution of the Bolshoi Theatre into the cultural life of Russia differs a priori from the contribution of a local house of culture, though the Bolshoi and this house of culture are equal as legal entities . . . *the state authorities have the right and moral duty to render assistance to those entities which determine the cultural level of the country.*

Metropolitan Kirill, Chairman, Moscow Patriarchate's External Church Relations Section, Principle of Religious Freedom Cannot Be Taken as Absolute, Address Before the Leading Officials of the Central Federal District, Kursk (July 21, 2004), *in* 47 EUROPAICA BULLETIN, Sept. 1, 2004, at http://orthodoxeurope.org/page/14/47.aspx#7 (emphasis added).

II. CHURCH & STATE IN SOVIET TIMES: CRUSH AND CONTROL

Many commentators already have covered in great detail the treatment of religion under Communist rule.[2] Accordingly, this article only discusses such treatment to the extent that it relates to the ROC's current status in Russia today. In contrast to the ROC's role as the state church in imperial Russia, the Soviet regime promised a government free from religious influence. But while Soviet laws guaranteed religious equality on their face, in reality, the ROC—in exchange for unflagging support of the communist regime—managed to retain a certain privileged status despite being subject to vicious persecution early on.

Notwithstanding the utter lack of governmental intent to uphold its substance, each consecutive Soviet constitution boasted clear and relatively progressive provisions related to freedom of conscience. For example, the 1918 Constitution of the Russian Socialist Federated Soviet Republic declared, "For the purpose of securing to the workers real freedom of conscience, the church is to be separated from the state and the school from the church, and the right of religious and anti-religous [sic] propaganda is accorded to every citizen."[3]

The 1918 Constitution even went so far as to welcome outsiders seeking protection from religious persecution. It promised, "[t]he Russian Socialist Federated Soviet Republic offers shelter to all foreigners who seek refuge from political or religious persecution."[4]

In its next iteration, Article 124 of the 1936 Constitution stated that "[i]n order to ensure to citizens freedom of conscience, the church in the U.S.S.R. is separated from the state, and the school from the church. Freedom of religious worship and freedom of antireligious propaganda is recognized for all citizens."[5]

2. *See*, *e.g.*, JOHN ANDERSON, RELIGION, STATE, AND POLITICS IN THE SOVIET UNION AND SUCCESSOR STATES (1994); FELIX CORLEY, RELIGION IN THE SOVIET UNION: AN ARCHIVAL READER (1996); STEVEN MERRITT MINER, STALIN'S HOLY WAR: RELIGION, NATIONALISM, AND ALLIANCE POLITICS, 1941–1945 (University of North Carolina Press, 2003); PAUL MOJZES, RELIGIOUS LIBERTY IN EASTERN EUROPE AND THE USSR: BEFORE AND AFTER THE GREAT TRANSFORMATION (1992); RELIGIOUS POLICY IN THE SOVIET UNION (Sabrina Petra Ramet ed., 1993).

3. Konstitutsiia RSFSR (1918) [RSFSR Constitution] art. 13 (Russ.), *available at* http://www.marxists.org/history/ussr/government/constitution/1918/article2.htm.

4. *Id.* art. 21.

5. Konstitutsiia USSR (1936) [USSR Constitution] art. 124 (Russ.), *available at* http://www.departments.bucknell.edu/russian/const/36cons04.html#chap10.

Likewise, the Soviet constitution of 1977 proclaimed similar protections under Article 52:

> Citizens of the USSR are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda. Incitement of hostility or hatred on religious grounds is prohibited.
>
> In the USSR, the church is separated from the state, and the school from the church.[6]

As with virtually all aspects of Soviet society, however, the lustrous shine of socialist promise fell far short of the bleak reality.[7] Rather than give meaning to the constitutional safeguards, for over seventy years Communist authorities undertook a concerted and vicious campaign of persecution against all religious communities, including the Russian Orthodox faith.[8] Religious property was either demolished or confiscated and religious leadership exiled, imprisoned, or killed.[9] A stark example of this policy came with the 1931 demolition of the Cathedral of Christ the Savior, then Moscow's largest and tallest building.[10] As Sona Stephan Hoisington wrote:

> There is no evidence that this decision [to raze the Cathedral] was made on the basis of feasibility. No studies had been conducted, no advance calculations made. In fact . . . the Directorate of Construction was still seeking detailed information about the area more than six weeks after the decision had been made. Clearly the

6. Konstitutsiia SSSR (1977) [USSR Constitution] art. 52 (Russ.), *available at* http://www.departments.bucknell.edu/russian/const/77cons02.html.

7. *See, e.g.*, Robert C. Blitt, "*Babushka Said Two Things—It Will Either Rain or Snow; It Either Will or Will Not": An Analysis of the Provisions and Human Rights Implications of Russia's New Law on Nongovernmental Organizations as Told Through Eleven Russian Proverbs*, 40 GEO. WASH INT'L L. REV. Part II(A) (forthcoming 2008) (discussing Soviet control over labor and civil society groups).

8. Daniel L. Schlafly, Jr., *Roman Catholicism in Today's Russia: The Troubled Heritage*, *in* RELIGIOUS LIBERTY IN NORTHERN EUROPE IN THE TWENTY-FIRST CENTURY 130 (Derek H. Davis ed., 2000).

9. According to James Billington, "there were at least 200,000 genuine Christian martyrs in the Soviet period: priests, deacons and others, lay people who can fairly be said to have died, not only from the irrationalities and violence of the Soviet system, but for their faith." James H. Billington, *Orthodoxy and Democracy*, 49 J. CHURCH AND ST. 23, 23 (2007).

10. Sona Stephan Hoisington, *"Ever Higher": The Evolution of the Project for the Palace of Soviets*, 62 SLAVIC REV. 41, 46 (2003).

> site was chosen because of its political symbolism. Christ the Savior was *the* personification of [czarist] authority in Moscow.[11]

Before dynamiting the building, Stalin's regime took care to first plunder the cathedral's valuables, including marble and 1000 pounds of gold leaf peeled from its five cupolas.[12] The destruction was "extremely graphic and dramatic, giving it great symbolic resonance. The demolition of the old church became an integral part of constructing the new temple to radical social and political change."[13] In place of the cathedral, Stalin envisioned a "Palace of Soviets," to be topped with a gigantic statue of Lenin—the "highest building on earth, higher than the Great Pyramid of Cheops, higher than Cologne Cathedral or the Eiffel Tower, taller than the highest skyscraper in New York."[14] Ultimately, however, "the Greatest Building in the World" never materialized.[15] In its place, Nikita Khrushchev gifted the people of Moscow with an oversized, steam-heated swimming pool built on the foundation of the "Palace" between 1958 and 1960.[16]

Setting the tone with this outward approach to religion, the Soviet government forced virtually all manifestation of religious life underground. The government even compelled individuals—including Communist party members (and possibly Mikhail Gorbachev, the engineer of *perestroika* and *glasnost*)—to lead atheist lives in public and maintain religious rites in secret at their own peril.[17]

11. *Id.*

12. *Id.*

13. *Id.* at 47.

14. *Id.* at 65. The article includes photos and sketches of architectural designs for Stalin's failed project.

15. *Id.* at 66. It was "generally thought that Stalin abandoned the project . . . because the foundation was faulty. . . . It seems much more likely, however, that [he] simply lost interest in the project." *Id.* at 65.

16. *Id.* at 68. In winter, the heated pool "gave off so much steam that paintings in a neighboring museum were damaged." Alan Cooperman, *Restoring a Lost Treasure*, 117 U.S. NEWS & WORLD REP., Dec. 5, 1994, at 67; *see also* Susan Marling, *Moscow Rebuilt by the Tsars of Bling*, DAILY TELEGRAPH, Feb. 16, 2008.

17. "Like many children of the Stalin era, [Gorbachev] was secretly baptised, by his grandparents. But during his career in the communist party he was—in public, at least—an atheist." Luke Harding, *When Mikhail Joined the God Squad*, THE GUARDIAN, Mar. 20, 2008, *available at* http://www.guardian.co.uk/world/2008/mar/20/russia.religion.

However, the Soviet government was not satisfied with merely crushing individual religious freedom; it also sought to violate the purported constitutional separation of church and state by infiltrating the ranks of whatever remained of organized religious life. To this end, the government focused much of its attention on the ROC. Until 1936, the government denied clergy civil rights on the basis of their membership in an exploiting class.[18] However, confronted with the need for popular allegiance in the war against Nazi Germany, Stalin brought the ROC's bishops to the Kremlin and delineated terms that would govern their relationship for the next fifty years. In short, "there would be no criticism of government policies by church leaders," and the "State would control church institutions and appointments."[19] In exchange for the ROC "making an appeal to national patriotic sentiments" to boost support for the war effort, Stalin "permitted the 'election' of a new Patriarch."[20]

From this point forward, "[O]rthodox hierarchs slavishly supported the government's foreign and domestic policies."[21] Stalin's "understanding," however, dramatically compromised church-state separation. The State "allowed the Orthodox Church to build relations with foreign religious entities [but] exploited the Orthodox presence on the international religious arena for its own interests."[22] By way of the KGB's control over the ROC's activities abroad, the Soviet government ensured, among other things, "that the World Council of Churches (WCC) consistently adopted positions advantageous to the Soviet leadership."[23] Through this interference and influence, many observers concluded that the KGB "subverted, penetrated and virtually remade" the ROC "as an arm of

18. Schlafly, *supra* note 8, at 130.

19. Michael Bourdeaux, *President Putin and the Patriarchs*, THE TIMES, Jan. 12, 2008, *available at* http://www.timesonline.co.uk/tol/comment/faith/article3172785.ece.

20. Arina Lekhel, *Leveling The Playing Field For Religious "Liberty" in Russia: A Critical Analysis of the 1997 Law "On Freedom of Conscience and Religious Associations,"* 32 VAND. J. TRANSNAT'L L. 167, 179 (1999).

21. Schlafly, *supra* note 8, at 131.

22. Lekhel, *supra* note 20, at 179 n.69.

23. Keith Armes, *Chekists in Cassocks: The Orthodox Church and the KGB*, 1 DEMOKRATIZATSIYA (NO. 4) 72, 73 (1993). Father Gleb Yakunin, a dissident priest defrocked by the ROC after refusing to give up his seat in parliament, has stated that within the top Church hierarchy, nine out of ten were KGB agents. *Id.* at 74; *see also* Andrew Higgins, *Putin and Orthodox Church Cement Power in Russia*, WALL ST. J., Dec. 18, 2007, at A1.

the Soviet state,"[24] or that "the Orthodox hierarchy was wholly under . . . KGB control."[25] Indeed, the fact that current ROC Patriarch, Aleksey II, served as a KGB agent for thirty years after being recruited as a young priest in Estonia in 1958 vividly demonstrates the extent of KGB infiltration of the ROC and the degree to which the ROC accepted this infiltration.[26]

As noted above, the State forced the ROC into the extremely uncomfortable position of choosing between foregoing the public profession of faith and kowtowing to the regime during the period of Communist rule. In the words of Michael Bourdeaux, "It is impossible for the outsider to understand the depth of the humiliation endured by the [C]hurch during the [seventy] years of

24. Sharon LaFraniere, *Russia's Well-Connected Patriarch: As Church Enjoys Revival of Influence, Its Past Remains Clouded*, WASH. POST, May 23, 2002, at A1.

25. Lekhel, *supra* note 20, at 195 n.156.

26. LaFraniere, *supra* note 24; *see also* Michael Bourdeaux, *The Complex Face of Orthodoxy*, THE CHRISTIAN CENTURY, Apr. 4, 2001, at 18–23, *available at* http://www.religion-online.org/showarticle.asp?title=2099; Seamus Martin, *New Russian Religion Law Harms Minority Churches*, IRISH TIMES, OCT. 6, 1997. Dmitri Pospielovsky challenges the scope of the KGB's infiltration of the ROC. He argues that KGB handlers probably filed "boastful reports . . . about the particular worth of the bishop-agents," and that none of the reports contained any precise details on the activities of those agents. Dmitri V. Pospielovsky, *The Russian Orthodox Church in Postcommunist CIS*, *in* THE POLITICS OF RELIGION IN RUSSIA AND THE NEW STATES OF EURASIA 41, 51 (Michael Bourdeaux ed., 1995). Pospielovsky further argues that the KGB probably hand-picked the archived files released to the public "with some ulterior motive in mind, for example to undermine the growing respect for religion by discrediting it with KGB connections, thereby continuing the seven-decades-old struggle against religion by new means." *Id.* A KGB report describes Drozdov's contribution—Patriarch Aleksey II's codename—in the following glowing terms: "He is well-orientated in theoretical questions of theology and the international situation. He has a willing attitude to the fulfillment of our tasks and has already provided materials deserving attention." Bourdeaux, *supra*, at 18–23. Notably, in 1989 Aleksey II also ran for and was elected to a seat in the USSR's Congress of People's Deputies. He served in that body from 1989 to 1991. Leslie L. McGann, *The Russian Orthodox Church under Patriarch Aleksii II and the Russian State: An Unholy Alliance?*, 7 DEMOKRATIZATSIYA 12, 16 (1999). In a 1991 newspaper interview, Aleksey II acknowledged that he was "sometimes forced to give way" to Soviet authorities, and apologized for "such concessions, the failure to speak out, the forced passivity and expressions of loyalty of the [C]hurch leadership." LaFraniere, *supra* note 24. In 1992, the Church established a commission to investigate its links to the KGB. However, no report was ever published. McGann, *supra*, at 13. Ultimately, even Pospielovsky concedes that "the continuing lack of information from the Moscow Patriarchate on the subject of the clergy's involvement with the KGB does the [C]hurch no good." Pospielovsky, *supra*, at 54. More forcefully, Billington notes, "Some of the [ROC] hierarchy, who became docile in the face of their atheistic overlords in the Soviet period, have now become xenophobic nationalists, rather than rise to the level of truth and reconciliation." Billington, *supra* note 9, at 25.

its captivity under communism."[27] To be sure, the persecution exacted on the Church was a far cry from its previously revered stature in Russia's history. Prior to Communism, the ROC's mission had long been "organically linked with Russia's ethnic and national identity,"[28] ensuring the "survival of Holy Russia and the attainment of a special place for its heritage among nations."[29] For example, Orthodoxy helped unify the Russian people in confronting the Mongols, thus facilitating a close-knit relationship early on between the ROC and government leaders.[30] Up to 1917, and probably throughout the communist era, the ROC saw itself as "the embodiment of the Russian national tradition, the core of the Russian national identity, and the guardian of the psychological well-being of the nation."[31] The Church itself boasts that "the long-standing culture of the Russian people . . . includes a thousand years of worship of God according to the Orthodox way."[32] As one observer has summarized, the ROC's uniqueness stems from its "unrivaled degree of respect and legitimacy as the embodiment of Russia's spiritual past and [its investment] with a national historic tradition that carries great mythical power."[33]

And yet, tied up in this history, inclusive of the Communist period, is the ROC's continual willingness, as during czarist times, to use the State for its own purposes, in exchange for offering religious sanction of the State's policies[34] and acknowledging political leaders "as God's chosen sovereigns."[35] As Marina Gaskova confirms, the ROC has always been affiliated with the secular political power. It

27. Bourdeaux, *supra* note 26, at 18–23.

28. Shima Baradaran-Robison et al., *Religious Monopolies and the Commodification of Religion*, 32 PEPP. L. REV. 885, 913 (quoting Schlafly, *supra* note 8, at 137).

29. Lekhel, *supra* note 20, at 181.

30. William J. Kovatch, Jr., *All Religions Are Equal, But Some Are More Equal Than Others: Russia's 1997 Restrictive Law of Religious Practices*, 6 DEMOKRATIZATSIYA 416, 421 (1998).

31. Marat S. Shterin & James T. Richardson, *Local Laws Restricting Religion in Russia: Precursors of Russia's New National Law*, *in* RELIGIOUS LIBERTY IN NORTHERN EUROPE IN THE TWENTY-FIRST CENTURY 141, 144 (Derek H. Davis ed., 2000). This article contains a detailed discussion of the situation governing religious freedom in the period between 1990 and 1997, particularly related to local regulation.

32. Baradaran-Robison, *supra* note 28, at 913–14 (quoting Schlafly, *supra* note 8, at 138).

33. McGann, *supra* note 26, at 12.

34. Bourdeaux, *supra* note 26.

35. Schlafly, *supra* note 8, at 128.

has no "tradition of independent functioning, independent development, [or] of struggle for human rights, for liberty or freedom,"[36] but rather "only a history of loyalty and glorification of the rulers."[37] Unlike other religious groups, including Baptists and Pentecostals, that refused to register with the Soviet authorities and preserved their faith by meeting secretly, only the ROC acceded to the direct control and oversight of the State. Referring to this relationship in 1927, ROC Patriarch Sergey proclaimed, "[T]he 'joys' of the Soviet [S]tate were its joys, and the 'sorrows' of the Soviet [S]tate were its sorrows."[38] This pattern of linkage is so deeply embedded that Aleksey II has determined that "the revival of Russia . . . is impossible without reviving the Orthodox faith."[39]

Importantly, it may be argued that this symbiotic relationship has been responsible for nurturing "strong reactionary and anti-liberal tendencies"[40] in the ROC as a means of preserving its protected status against others and silencing perceived threats associated with competing ideas.[41] Indeed, coupled with the willingness to stand in lockstep with the State is the ROC's long history of xenophobia in the face of "infidels" and "foreigners." This fear of others is a constantly reappearing theme marked by numerous milestones, including ROC lobbying in 1652 to force all foreigners in Moscow to move into a zone of foreign settlement outside the city "to minimize contamination by Western Christians."[42]

To better understand the dynamics of the relationship between the ROC and the Russian government—particularly during the Communist era—it is instructive to consider by way of analogy the

36. Marina Gaskova, *The Role of the Russian Orthodox Church in Shaping the Political Culture of Russia*, 7 J. FOR THE STUDY OF RELIGIONS & IDEOLOGIES 110, 111 (2004).

37. *Id*. at 116.

38. Wallace L. Daniel & Christopher Marsh, *Russia's 1997 Law on Freedom of Conscience in Context and Retrospect*, 49 J. CHURCH & ST. 5, 8 (2007); *see also* John B. Dunlop, *The Russian Orthodox Church as an "Empire Saving" Institution*, *in* THE POLITICS OF RELIGION IN RUSSIA AND THE NEW STATES OF EURASIA 15, 19 (Michael Bourdeaux ed., 1995) (quoting "the 'joys and sorrows of the [communist] Motherland' were those of the Russian [C]hurch."); *infra* note 199 (discussing origin of term sergeyism).

39. Schlafly, *supra* note 8, at 137.

40. Gaskova, *supra* note 36, at 116.

41. The ROC's reactionary nature can be seen in its highest echelons. For example, Metropolitan Ioann of St. Petersburg and Ladoga consistently espoused notoriously anti-Semitic views without opposition or censure from the ROC hierarchy, including Patriarch Aleksey. McCann, *supra* note 26, at 14.

42. Schlafly, *supra* note 8, at 128.

behavior of a battered spouse trapped in a cycle of violence. Similar to a battered spouse, the Church was confronted by a situation of mounting tension with an abuser who increasingly craved power and control in the relationship. "Ultimately, there is an explosion or battering incident" during which the abuser is "likely to have actually experienced a physiological release of tension." This phase is followed by a "honeymoon" or "loving and contrite" stage where the abuser is "willing to try anything to make up."[43] Like the battered spouse, the Church had its own reasons for staying in the relationship, whether it stemmed from a desire to protect itself "from even worse destruction under the Communists,"[44] a belief or false hope that the relationship would improve over time, or a loyalty to an idealized vision, for example the traditional church-state arrangement alluded to above.[45] Interestingly, this victim mentality persists and may be indicative of the syndrome still in play today. Archpriest Vsevolod Chaplin, Deputy Chairman of the Moscow Patriarchate Department for External Church Relations, has commented that "[w]e don't consider that everything which was done in that Soviet period was incorrect . . . . To reject Soviet power as something totally bad, and to blame someone just for being in good touch with Soviet authorities, I think is a highly politicized approach."[46]

43. Lenore Walker, *Dynamics of Domestic Violence—The Cycle of Violence*, http://www.enddomesticviolence.com/include/content/filehyperlink/holder/The%20Cycle%20of%20Violence.doc (last visited Aug. 13, 2008). It is useful to recall here the deal struck with Stalin to garner ROC support during WWII. *See supra* text accompanying note 19.

44. Peter Juviler, *Religious Human Rights: Constitution, Law, and Practice in Post-Soviet Russia*, *in* PUBLIC POLICY AND LAW IN RUSSIA: IN SEARCH OF A UNIFIED LEGAL AND POLITICAL SPACE 225, 231 (Robert Sharlet & Ferdinand Feldbrugge eds., 2005). Reverend Chaplin has claimed that the "archives of Soviet institutions . . . shed light on the tremendous efforts—unknown to the world—hierarchs and clergy of the Russian Church made to guard the faithful against the repressions carried out by the godless totalitarian regime." *Radical-Liberal View on Human Rights Is Not the Sole Possible Opinion*, INTERFAX, Apr. 5, 2006, http://www.pravmir.com/printer_86.html. [hereinafter *Radical-Liberal*].

45. *See, e.g.*, Partners Healthcare Employee Assistance Program, *Who We Are*, http://www.eap.partners.org/WorkLife/Domestic_Abuse/Why_do_Women_stay/Why_do_Women_stay_in_Abusive_Relationships.asp (last visited Aug. 13, 2008).

46. LaFraniere, *supra* note 24, at A1. Reverend Chaplin reiterated his view of the Soviet era when the ROC announced support for Putin's decision to incorporate into Russia's national anthem music used in the Soviet version: "I think that the president has made a very worthy decision . . . . Alexandrov's music, which shows continuity with the Soviet era, in which, of course, there were terrible tragedies, but there were also a lot of good things." Andrei Zolotov Jr., *Russian Orthodox Church Approves as Putin Decides to Sing to a Soviet*

What for certain does emerge from this historical perspective is the consistent, if fluid, symbiosis between church and state in Russia.[47] Historically, each institution cosseted the other to the extent allowable or dictated by the circumstances of the day. Despite enduring persecution and suffering, the Church maintained a preeminence of place against other religions because of its collaboration with the Soviet regime.[48] In this way, the ROC ensured its influence and sway in relevant questions of state to the greatest extent possible. Indicative of this steady pattern of deference and collaboration, as late as 1988, Patriarch Pimem expressed his view that "[t]he children of the [ROC] who are citizens of the Soviet Union live in the context of a society whose program . . . *is characterized by an elevated humanism, and thus close to Christian ideals.*"[49] Up until the demise of the Communist enterprise, the ROC's practical alliance with the State—if permitting any institutional independence at all—pressed the Church to grow ever compliant in the face of chronic meddling in its internal affairs, even to the point of adopting doctrinal adjustments to legitimize its relationship with a dominant state.[50]

III. A RETURN TO (LESS ABUSIVE) SYMBIOSIS OR A CLEAN SLATE? OPEN SEASON FOR REDEFINING CHURCH-STATE RELATIONS IN POST-COMMUNIST RUSSIA

A. From Communism to Freedom: A New Opportunity for Russia or a Threat to ROC Influence?

This section traces the emerging dynamics of the church-state relationship in the wake of the collapse of the Soviet Union, and specifically during the tumultuous years of Russia's post-Communist legal and constitutional development. Notably, the ROC remained standing after all other centralized Soviet institutions—with the

Tune, CHRISTIANITY TODAY, Dec. 1, 2000, http://www.christianitytoday.com/ct/2000/decemberweb-only/57.0.html.

47. Bourdeaux, *supra* note 26; *see also* Gaskova, *supra* note 36, at 116.

48. Lekhel, *supra* note 20, at 181.

49. Schlafly, *supra* note 8, at 131 (emphasis added).

50. Lekhel, *supra* note 20, at 181.

exception of the State's security apparatus—collapsed.[51] Even as transitional uncertainty and instability enveloped Russia, the ROC gradually began flexing its partially atrophied muscles with the objective of recovering its rightful place in whatever new political reality came to settle in the Kremlin.[52] For example, during the 1988 millennium celebration of the Christianization of Russia, an independent meeting organized by a liberal wing of the Orthodox Church was shut down not once, but twice. First, government agents closed the venue "under the pretext of fire law violations," and then, after relocating, regular police and the KGB simply broke up the gathering.[53] The following day, the meeting's organizer speculated that the disruption likely stemmed from a government agreement with the ROC "to eliminate any possible independent side shows during the Millennium" celebration.[54]

Despite this incident, in transitioning away from Communist-era style government, Mikhail Gorbachev carried 'openness' in religious freedom to a level unprecedented since the 1917 Bolshevik Revolution. By 1988, religious life in Russia had its first taste of revival, soon bolstered by two important laws passed in 1990. The laws "On Freedom of Conscience and on Religious Organizations"[55] and "On Freedom of Worship" prohibited religious discrimination and established a foundation for religious liberty and separation of church and state in Russia.[56] Shterin and Richardson have observed that in some respects the 1990 law enshrined principles "very similar

51. Armes, *supra* note 23, at 72. Georgy Edelshtein, a dissident priest, has called the Moscow Patriarchate "the last Soviet institution." Victoria Pope, *God and Man in Russia*, U.S. NEWS & WORLD REP., Mar. 2, 1992, at 54.

52. Metropolitan Kirill himself recently used this analogy in the context of the ROC's confrontation against foreign missionaries: "We were like a boxer who walks around for months with his arm in a cast and is then abruptly shoved into the ring, accompanied by shouts of encouragement. But there we encountered a well-trained opponent, in the form of a wide variety of missionaries . . . ." Spiegel Online International, *Interview with Russian Orthodox Metropolitan Kyrill: The Bible Calls it a Sin*, Jan. 10, 2008, http://www.spiegel.de/international/world/0,1518,527618-2,00.html.

53. Juviler, *supra* note 44, at 225.

54. *Id*. This incident is also cited as evidence that what "had been a coerced cooperation between the ROC and government under communism slid into a developing collaboration." *Id*. at 229.

55. The 1990 law has been described as going "beyond everyone's expectations in proclaiming total freedom of religion." Michael Bourdeaux, *The New Russian Law On Religion: A View From the Regions*, 49 DEPAUL L. REV. 139, 140 (1999).

56. Gaskova, *supra* note 36, at 118.

to the American model of church-state relationships: the principles of nonestablishment, strict separation between church and state, and equality of all religions before the law."[57] Nevertheless, it could just as easily be said that the law mirrored previous Soviet constitutional declarations, as evidenced in the discussion above.[58] In fact, the only potential difference between these two models rested not on principles, but rather on the questions of implementation and enforcement. In other words, would the 1990 laws (and soon thereafter the 1993 Constitution) actually result in separation of church and state and freedom of religion, or would they promote these ideals only in the abstract?

The promise of the 1990 laws posed an immediate problem for the ROC, as it complicated the organization's primary objective. Rather than focus on rebuilding itself and securing anew its favored status *vis-a-vis* whatever government rose from the tumult of transition, the ROC was instead forced to "compete" against other religious groups in the "free marketplace" of ideas now open to all Russians. As one Church insider observed, "[A] great many Russians are ignorant of Russian Orthodoxy or indifferent to it. But their roots are Orthodox. It is our task to return them to Orthodoxy."[59] Although new legislation began the process of transferring sequestered properties back to the Church, outreach and rebuilding activities proceeded against the backdrop of competition from other domestic and foreign religious groups that were likewise seeking out the "great many Russians"[60] who, while perhaps ignorant or indifferent to religion, might be curious and open to hearing more.[61]

57. Shterin & Richardson, *supra* note 31, at 142.

58. Admittedly, the United States was first "to construct a constitutional framework that officially sanctioned the separation of church and state as a means of guaranteeing religious liberty." Derek H. Davis, *The Evolution of Religious Freedom as a Universal Human Right: Examining the Role of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 2002 BYU L. REV. 217, 222.

59. Lekhel, *supra* note 20, at 195 n.155.

60. *Id.*

61. *See* MEMBERS OF THE SPEAKER'S ADVISORY GROUP ON RUSSIA, 106TH CONG., RUSSIA'S ROAD TO CORRUPTION: HOW THE CLINTON ADMINISTRATION EXPORTED GOVERNMENT INSTEAD OF FREE ENTERPRISE AND FAILED THE RUSSIAN PEOPLE (Sept. 2000) (noting that "[r]eligious faith has sharply increased since the collapse of the Soviet Union," and that "in a remarkably brief period of time, Russia has become one of the most God-believing countries in Europe"), *available at* http://www.fas.org/news/russia/2000/russia/part12.htm (citations omitted).

B. If I Had a Hammer and a Restrictive Law (and a License to Import Tobacco Duty-Free): Church Efforts to Rebuild Post-1990

After the fall of communism, the ROC focused on rebuilding its infrastructure both as a visible means of reasserting its place in Russian culture and competing against the growing activism of other religious groups operating in Russia. This preoccupation with rebuilding infrastructure reveals a measure of success. Since 1987, the ROC reopened over 6000 churches, and as of 2007, it maintained 142 dioceses, 732 monasteries and convents, and almost 28,000 parishes in Russia and abroad.[62] Impressively, the number of monasteries multiplied thirty-two times, and by 2008, 15,000 young people had immersed themselves in the study of Orthodox theology.[63] A casual observer of construction projects in Russia in 1992 would be surprised to learn of the ROC's claimed financial hardship and struggle to match the activities of other religious groups. Perhaps most visibly, the Church successfully lobbied President Yeltsin to place the rebuilding of the Cathedral of Christ the Savior first on the list of building projects for Moscow.[64] In the same manner that Stalin sought to transmit a strong signal by dynamiting the original structure, the ROC intended the rebuilding from the ground up of the twenty-five-story cathedral certainly to carry a message of equal magnitude.

That the massive, multi-year project to rebuild the cathedral was undertaken—at least in part—with public funds,[65] however, raises a number of troubling concerns: first, it brings into sharp relief the dubious logic of the ROC's singular preoccupation in the first years following the collapse of Communism with rebuilding physical infrastructure; and second, given the ROC's early ability to access government subsidies to the exclusion of other religious groups, it

62. Lyudmila Alexandrova, *Russian Church Says Satisfied with Results of Activity in 2007*, ITAR-TASS, Dec. 25, 2007.

63. *See* Spiegel Online International, *supra* note 52.

64. The Cathedral of Christ the Savior, *The Stages of Reconstruction: Reconstruction (1990–2000)*, http://www.xxc.ru/english/reconst/stage/index.htm (noting that the rebuilding was brought into effect by the decree on "The Establishment of a Fund for the Recreation of Moscow").

65. The ROC continues to accept donations to further refurbish the cathedral, including "recreating unique jewelry utensil [sic] made of precious metal and gem stones." The Cathedral of Christ the Savior, *How You Can Help*, http://www.xxc.ru/english/donation/index.htm.

raises doubts about how the "open market" of religious freedom actually discriminated against the ROC.

Also noteworthy here is the fact that the Russian government granted the ROC—to the exclusion of other religious groups—permission to import duty-free tobacco and liquor for sale directly to the public as a source of Church revenue.[66] Further, the government allegedly unlawfully diverted public funds into additional Church building projects.[67] Even today, the ROC refuses to disclose how much income it garnered from tax-free cigarette sales and other related activities.[68]

For the ROC, however, government support in the construction realm and financial compensation schemes alone were insufficient payback. A recurrent claim among ROC officials and supporters was that the Church simply lacked the resources to compete against Western missionaries, who were invariably better funded. Consequently, the ROC reasoned that state protection was warranted.[69] Alexander Dvorkin, a ROC functionary and crusader against "totalitarian" sects, argued, "[t]he competition between the Orthodox Church and the sects is unfair—the forces are uneven

66. McGann, *supra* note 26, at 19; *see also* Martin, *supra* note 26. The Church's willingness to profit from the sale of tobacco and alcohol makes the hypocrisy of its recent criticism of *Damskaya* ("Ladies"), a vodka exclusively targeting women drinkers, particularly glaring. According to Archpriest Chaplin, the marketing effort is "a very dubious step from the moral point of view." *The Russian Orthodox Church Considers New* Damskaya *Vodka for Women Morally Dubious*, INTERFAX, Mar. 21, 2008, http://www.interfax-religion.com/?act=news&div=4434. For a contrasting perspective of empowerment, positing that *Damskaya* "is indicative of a changing dynamic in relations between men and women" in Russia due to women gaining newfound financial independence, *see* The Age, *Vodka Takes a Shot at Russian Women*, Mar. 30, 2008, http://www.theage.com.au/articles/2008/03/29/1206207493274.html.

67. Paul Glastris, *A Mixed Blessing for the New Russia*, U.S. NEWS & WORLD REP., June 16, 1996, at 47.

68. LaFraniere, *supra* note 24. The Kremlin granted the ROC this import privilege partly as compensation, with a value estimated at between $75 and $100 million. The Church also acquired a 40 percent stake in MES, an oil-export company with 1996 revenue estimated at $2 billion. The Yeltsin government canceled the cigarette concession in late 1996 and the Church lost MES as a source of income when it closed two years later. "Now, the [C]hurch survives partly on a bottled water business and contributions from wealthy enterprises," including state industries such as Gazprom and Lukoil. *Id.* Kirill has claimed "[w]ealthy private citizens . . . pay for almost all of the [C]hurch's social programs." Spiegel Online International, *supra* note 52.

69. The Church "faced an increased competition from foreign missionaries who were experienced and possessed considerable resources for mass evangelization." Lekhel, *supra* note 20, at 196.

from the outset. The sects can buy TV time, plus they use dishonest forms of recruitment."[70] Comments regarding the activities of a Catholic missionary group in *The Missionary Observer*, an official ROC publication, are particularly revealing and reinforce the continuing xenophobic character of the Church: "[The mission's leader] is not the first missionary from abroad who tries to seduce children in such a way. Rock music is playing in the mission and children are doing there what they want. Pedagogical anarchism is a frightening phenomenon and here it flourishes."[71]

The report goes on to describe the group as "two arms of an octopus" enveloping the Russian Orthodox heartland. "They take our children to a small Disneyland, a trap of cunning devilry."[72] In the ROC's own language: "These [sectarian] views destroy the traditional organization of life that has been formed under the influence of the [ROC]. They destroy the spiritual and moral ideal that is common to all of us; and they threaten the integrity of our national consciousness and our cultural identity."[73]

Thus, above and beyond import licenses and state support for construction efforts, in the face of the liberal 1990 laws the ROC

70. *Id*. at 196 n.159. Dvorkin also served as an expert witness for the Russian prosecution in its case against the Jehovah Witnesses, testifying to the "mafia-like" nature of sects. Mikhail Gokhman, *Are All Sects Totalitarian?*, Feb. 6, 1997, http://religiousfreedom.lib.virginia.edu/relfreerep/cis98.html#14b; *see also* Charlotte Wallace, *The Jehovah's Witnesses Case: Testing the 1997 Law "On Freedom of Conscience and Religious Associations" and the Russian Legal Process*, 32 CAL. W. INT'L L.J. 39, 57 (2001) (discussing the "mafia-like" nature of sects).

71. The missionary group in question, Pro Deo et Fratibus, ran a mission for children from poor families in the Yaroslaval region of Russia. David Hearst, *Orthodoxy Raises Barriers*, THE OBSERVER, Dec. 15, 1996, at 8.

72. *Id*.

73. Shterin & Richardson, *supra* note 31, at 333 n.48 (quoting The Council [Sobor] of the Archbishops of the Russian Orthodox Church, Art. 9, Dec. 1994, unpublished). Apparently, while the ROC adamantly opposes missionary groups appealing to Russian citizens, it is quite acceptable for the ROC itself to "destroy the traditional organization of life that has been formed" outside of Russia. In a move ripe with irony and underscoring the depth of the ROC's hypocrisy, elements within the [C]hurch have called publicly for the Moscow Patriarchate to "begin actively preaching among the Russian-speaking Jews of Israel." In the words of Deacon Andrey Kuraev, "This is a unique missionary opportunity—we could bring the light of the New Testament to Israel through Jews who are brought up on the European and Russian classics." Strangely absent from Kuraev's missionary zeal is any concern for destroying "the spiritual and moral ideal" of another state or threatening the integrity of its national consciousness and cultural identity. *Israel Is a Special Field for Missionary Activity of the Church, the Famous Russian Cleric Said*, INTERFAX, May 5, 2008, http://www.interfax-religion.com/print.php?act=news&id=4635.

demanded nothing less than state protection against what it termed an "invasion" of foreign faiths and peoples that threatened the fabric of Russian society.[74] By June 1993, Patriarch Aleksey II had thrown his considerable weight behind support for an amendment to the law "On Freedom of Conscience" that would impose restrictions on "non-traditional" religious organizations, weaken guarantees for equal treatment for all believers, extend fundamental human rights protection only to Russian citizens, and entrench favored treatment on the ROC.[75] He even distributed a letter to all members of the Supreme Soviet, Russia's legislative body at that time, urging their support for the legislation.[76] Shortly thereafter, the legislature successfully passed the amendment.[77] Not content to rest after having won over the Supreme Soviet, the Patriarch met with President Boris Yeltsin days later to urge him to sign the amended law.[78] Yeltsin refused, concluding that the amendments contradicted Russia's legal agreements and compromised the "equal right of individuals to enjoy freedom of conscience and religion . . . regardless of their possession of Russian citizenship."[79] Instead, he returned the measure to the Supreme Soviet with requests for revisions.[80] Shortly thereafter, Yeltsin took steps to dissolve the Supreme Soviet legislature and momentum around the amendment effort came to a halt, at least temporarily.

In simplest terms, the ROC had choices to make and priorities to order after 1990. It also clearly had access to necessary funding. But rather than direct funds to outreach, including buying "TV time" and creating "small Disneylands," the Church instead opted to focus on lavish and expensive construction projects.[81] To address the

74. The Church continued to employ this type of terminology. According to Patriarch Aleksey II, "Both foreign sects and missionaries view Russia as an open field . . . . This is a form of expansion to the East, and it is comparable to NATO's expansion to the East." Dmitry Zaks, *Yeltsin Faces Pressure Over Bill on Religion*, THE MOSCOW TIMES, July 22, 1997.

75. W. Cole Durham, Jr. et al., *The Future of Religious Liberty in Russia: Report of the De Burght Conference on Pending Russian Legislation Restricting Religious Liberty*, 8 EMORY INT'L L. REV. 1, 2 (1994).

76. *Id*. at 9.

77. Lekhel, *supra* note 20, at 197.

78. Durham, *supra* note 75, at 10.

79. *Id*.

80. *Id*. (providing a detailed account of Yeltsin's reaction to the 1993 bill).

81. Some critics also question the Church's ability to fill the pews with worshippers once buildings are returned, rebuilt, or rehabilitated. Fred Weir, *Russia's Orthodox Church Regains Lost Ground*, CHRISTIAN SCI. MONITOR, Nov. 14, 2007, at 6.

"invasion" of foreign missionaries and religious groups, the ROC relied on political pressure rather than cash. Viewed from this perspective, the ROC's arguments that it lacked institutional structures for supporting proselytism and religious education, or that it could not compete against experienced and well-funded foreign missionaries[82] starts to lose traction.

That said, the ROC was not alone in seeing value in rebuilding the Cathedral of Christ the Savior. President Yeltsin and Yuri Luzhkov, the mayor of Moscow, both recognized the political capital to be gained from supporting the project and were on hand to cement the final bricks in the new cathedral's main entrance.[83] At least one Russian television documentary reasoned that Yeltsin's and Luzhkov's endorsement of the cathedral's construction was primarily aimed at garnering support for the 1996 presidential elections. According to journalist Leonid Parfyonov, "Our political authorities . . . are trying to look more Orthodox than the [P]atriarch."[84] McGann similarly concludes that the construction effort represented "a political endeavor," "a symbol of Orthodoxy's value, and Aleksy's prowess, in the political sphere" rather than anything spiritual.[85] In other words, the symbiosis between church and state evidenced signs of being alive and well, in a honeymoon phase again, to recall the analogy of the battered spouse used above.

Despite the ROC's failure to secure amendments to the 1990 law, a flurry of other developments—some perhaps trifling, others not—conspired to undermine the foundation of Russia's new-found religious freedom. In 1990, Patriarch Aleksey publicly blessed Yeltsin before he embarked on his first election campaign. Yeltsin subsequently called Aleksey up to the dais during his 1991 swearing-in ceremony to offer another blessing.[86] As early as 1993, scholars questioned the ROC's steady support of government measures to combat anti-Yeltsin forces, censor the media, and restrict political freedoms.[87] For instance, the Church opted only for vague appeals to

82. Lekhel, *supra* note 20, at 195–96.

83. In April 1996, Patriarch Aleksey II conducted the first service in the partially completed cathedral. President Yeltsin, members of the Cabinet of Ministers and Mayor Luzhkov attended. The Cathedral of Christ the Savior, *supra* note 65.

84. Cooperman, *supra* note 16, at 67.

85. McGann, *supra* note 26, at 20.

86. Pope, *supra* note 51.

87. McGann, *supra* note 26, at 17.

have "the courage to forgive the offender" in the face of Russia's military intervention in Chechnya.[88] Less than two months later, this ambivalent position morphed into an enthusiastic call from the ROC to Russia's young men to join the army and to defend the motherland,[89] leaving the distinct impression that, only four years after the collapse of Communism, the relationship between church and state was again one of "quid-pro-quo."[90]

During the 1996 presidential election, Boris Yeltsin reached out to the ROC for the benefit of his campaign. With TV cameras rolling, Yeltsin visited local churches, lit candles, and made public appearances with Patriarch Aleksey II.[91] Further, although Russia's election law prohibited political appearances on the last day of the presidential campaign, Yeltsin decided to take a stroll outside the Kremlin together with Aleksey II. In front of TV cameras and gawking locals, Aleksey, clearly intending to communicate support for Yeltsin's candidacy, opined, "Please make the right choice tomorrow . . . [b]ecause tomorrow the fate of Russia shall be determined."[92]

To be sure, this unfolding church-state dynamic was not simply a heavy-handed, one-way street as during Communist times. Rather the scales indicated an all too easy return to the symbiosis of the pre-Communist era, a balance characterized by partnership and mutual benefit. Indeed, while Yeltsin was off campaigning, the Patriarch enjoyed "a suite of offices at the Kremlin," a benefit not enjoyed by the ROC since czarist times.[93] In McCann's words:

88. *Id*. at 18 (quoting Interview by Natalie Zhelnorova with Aleksey II, Patriarch, ROC, *in* Natalie Zhelnorova, *Patriarkh: Ne vsiakomu dukhu ver'te*, ARGUMENTY I FAKTY, Aug. 17 1995, at 3).

89. McGann, *supra* note 26, at 18. Yuri Feofanov, longtime legal correspondent for *Isvestia*, goes further, concluding that Aleksey's statement "was expressly designed to assist the government in its conscription effort and constituted a dangerous entreaty to Russia's young men to fuse the services that Christ had once urged man to render separately, unto Caesar and unto God." *Id*.

90. Vicki L. Hesli et al., *The Patriarch and the President: Religion and Political Choice in Russia*, 7 DEMOKRATIZATSIYA 42, 49 (1999).

91. Glastris, *supra* note 67.

92. Lee Hockstader, *Yeltsin Makes Last-Minute Pitch; As Polls Prepare to Open in Vote, Church Head Cites "Right Choice,"* WASH. POST, June 16, 1996, at A27; *see also* McGann, *supra* note 26, at 20.

93. Glastris, *supra* note 67. Yeltsin's campaign managers considered showcasing a priest in their advertisements, but retreated for fear the strategy "might back-fire and play into the hands of the opposition, since the [C]hurch is not supposed to officially be involved in

> [The Yeltsin administration] had ample reason to seek an alliance with the church as a highly respected institution, to boost its support base through the highly publicized mutual association. On the other hand, [Aleksey's] church has been supporting Yeltsin because he has been generous both in building the church's political status . . . and in facilitating its growth as a religious institution.[94]

In another showing of the ROC's prominence in Russian politics, Yeltsin once again invited Aleksey to attend the presidential inauguration, this time in direct conflict with the freshly minted 1993 Constitution. According to this document, the oath of the President of the Russian Federation is "taken in a solemn atmosphere in the presence of members of the Council of the Federation, deputies of the State Duma and judges of the Constitutional Court of the Russian Federation."[95] Notably, this provision fails to provide a non-restrictive term such as "including," which would presuppose a non-exhaustive list under traditional constitutional interpretive rules. Moreover, no further provision is made for attendance or blessings by religious organizations or leadership; rather, the ceremony is defined as a solemn event that, if not expressly secular in nature, at least makes no provision for religious participation. Further, the decision to invite Aleksey to speak on behalf of all 'traditional' religions, thus effectively excluding these other groups from equal participation, likewise signaled a violation of Article 14 of the new Constitution.[96] To be sure, the constitutional violation exhibited by Yeltsin's inaugural planners would not be the last violation condoned by governments to follow.

politics." McGann, *supra* note 26, at 20 (quoting Mikhail Margelov, producer of Yeltsin's political ads, as quoted in Alessandra Stanley, *Church Leans Toward Yeltsin in Russian Vote*, N.Y. TIMES, May 30, 1996, at A1). Things were different in Moscow: Mayor Luzhkov, a co-chairman of the Yeltsin campaign, endorsed giant billboards across the city featuring images of Yeltsin and Luzhkov "shaking hands against the glittering gold and white backdrop of the Kremlin's Ioann Lestivichnik church and belfry. Above it, the logo reads, 'Moscovites have already made their choice.'" McGann, *supra* note 26, at 20.

94. McGann, *supra* note 26, at 22.

95. Konstitutsiia Rossiiskoi Federatsii [Constitution] art. 82(2) (Russ.). This point is also made by McGann, *supra* note 26, at 21.

96. Juviler, *supra* note 44, at 231.

C. On the 1993 Constitution

Despite the ROC's profound opposition, the principles enunciated in the 1990 religion laws ultimately became enshrined in the 1993 Constitution, a document endorsed by a majority of the Russian people through a public consultation.[97] Scholars describe this Constitution as a "mixed document" that draws on "Anglo-American, continental European, and Russian constitutional traditions," resulting in a "collision of legal cultures."[98] Yet with respect to rights related to freedom of thought, conscience, and religion or belief, the Constitution successfully embodied international standards as envisioned in the Universal Declaration of Human Rights[99] and the International Covenant on Civil and Political Rights rather than any culturally-specific tradition.[100] Consider Article 28 of Russia's Constitution: "Everyone is guaranteed the freedom of conscience, freedom of religious worship, including the right to profess, individually or jointly with others, any religion, or to profess no religion, to freely choose, possess and disseminate religious or other beliefs, and to act in conformity with them."[101]

Though not required under international standards, the 1993 Russian Constitution included a provision mandating separation of church and state. Article 14 of the Constitution proclaimed, "1. The Russian Federation is a secular state. No religion may be instituted as state-sponsored or mandatory. 2. Religious associations are separated from the [S]tate, and are equal before the law."[102] One critic of this

97. According to statistics from Russia's Central Electoral Commission, 54.8 percent of Russia's 106 million voters cast ballots on December 12, 1993. In response to the question "Do you support the adoption of the new constitution of Russia?" 58.4 percent voted "Yes" in favor of adoption. There is some debate over whether the voting was in actuality a "referendum" or something less since it did not comply with the Referendum Law of 1990. Timothy J. Colton, *Introduction: The 1993 Election and the New Russian Politics*, *in* GROWING PAINS: RUSSIAN DEMOCRACY AND THE ELECTION OF 1993, at 16, 21 (Timothy J. Colton & Jerry F. Hough eds., 1998).

98. Christopher Marsh & Daniel P. Payne, *The Globalization of Human Rights and the Socialization of Human Rights Norms*, 2007 BYU L. REV. 665, 681.

99. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

100. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 18, U.N. Doc. A/6316 (Dec. 16, 1966) (*entered into force* Mar. 23, 1976), *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm [hereinafter ICCPR].

101. Konstitutsiia Rossiiskoi Federatsii [Constitution] art. 28 (Russ.).

102. *Id.* art. 14.

provision, Nikolas Gvosdev, argues that the term *svetskoe gosudarstvo* (translated here as 'secular state'), "carries with it not the understanding of secular as 'religiously neutral' but rather the connotation of 'temporal.'" In other words, the Constitution only requires that the "[S]tate does not interfere in matters of the [C]hurch . . . and concerns itself with temporal, earthly matters." In Gvosdev's view, this limitation does not require "that society as a whole [remains] religiously neutral. Instead, society can express its preferences in religious matters through non-governmental means."[103]

More provocatively, Gvosdev reasons that the "very phrasing" of the Constitution's "individual religious liberty" provisions (Article 28), "couched in terms of Western individualism[,] . . . clashes with deeply-rooted historical and constitutional attitudes in Russia itself with regard to how 'religious freedom' is to be understood and applied."[104] Thus he pleads: "Whenever possible, those working for religious freedom should avoid citing Western (especially American) precedents or international treaties when framing their arguments, so as to avoid giving the impression that they are advocating positions that are not in harmony with established Russian laws and constitutional traditions."[105]

There is no indication in the literature of any support for Gvosdev's interpretation of Article 14 of the Constitution, nor can such evidence be found in decisions of Russia's Constitutional Court. In essence, Gvosdev's plea is merely a relativist assertion for Russian exceptionalism in the face of what are, in actuality, domestic, regional and international standards to which the Russian government (backed by a majority of Russians) has bound itself willingly.[106] It is staggering to contemplate a request for human

103. Nikolas K. Gvosdev, *Religious Freedom: Russian Constitutional Principles—Historical and Contemporary*, 2001 BYU L. REV. 511, 516.

104. *Id.* at 522. It is worth noting that "as many as one-third of the nations of the world include formal guarantees of church-state separation in their constitutions." Davis, *supra* note 58, at 223.

105. Gvosdev, *supra* note 103, at 534.

106. Consider, for example, Abdullahi An-Naim's plea regarding human rights in Muslim states: "I conclude that human rights advocates in the Muslim world *must work within the framework of Islam to be effective*." Abdullahi Ahmed An-Na'im, *Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives*, 3 HARV. HUM. RTS. J. 13, 15 (1990) (emphasis added). Even though An-Na'im proceeds by taking "the International Bill of Human Rights as the source of [universal] standards," he still argues for a strategy that hinders

rights activists and religious groups (both outside and *inside* Russia) to forego the use of citation to international treaties, since such a step—however useful for minimizing scrutiny of conditions related to freedom of religion in Russia—would surely undermine the very object and purpose of those treaties. More precisely, the argument that the principles enshrined in such treaties as the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) are "Western," is of no merit in the face of Russia's willingness to adopt, ratify, and benefit from such treaties.[107]

Given this context, this article proceeds with a more conventional understanding of Article 14—and for that matter, with all the rights provisions contained in the 1993 Constitution. This understanding is grounded on plain text meaning and compliance with Russia's regional and international commitments. Significantly, such an approach is harmonious with the guidance provided by the 1993 Constitution itself. Article 15(4) provides:

> The universally recognized principles and norms of the international law and the international treaties of the Russian Federation are a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those established by the law, the rules of the international treaty shall apply.[108]

the invocation of key international instruments and constrains the legitimacy of outside scrutiny:

> I urge human rights advocates to claim the Islamic platform and not concede it to the traditionalist and fundamentalist forces in their societies. I would also invite outside supporters of Muslim human rights advocates *to express their support with due sensitivity and genuine concern for Islamic legitimacy* in the Muslim world.

Id. at 50 (emphasis added).

107. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, E.T.S. No. 5 (entered into force Sept. 3, 1953) *amended by* E.T.S. No. 155, *available at* http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf. Russia ratified the European Convention on May 5, 1998. And yet this view continues to be espoused by various commentators. For example, a recent op-ed argues, *inter alia*, "To criticize Russian society, including the resurgence of the Orthodox Church, by using post-Enlightenment Western European arguments is not only out of context, but also likely to reinforce Russia's paranoia reflex." Vladimir Berezansky Jr., *Nothing Weird About Orthodox Tradition*, MOSCOW TIMES, Apr. 29, 2008.

108. Konstitutsiia Rossiiskoi Federatsii [Constitution] art. 15(4) (Russ.).

This understanding of Russia's constitutional text still does not fully resolve the breakdown in Russia's separation of church and state. In fact, this breakdown may signal a need for constitutional amendments to validate the de facto scenario that has emerged in the past fifteen years. While international law is silent on the legitimacy of a nation's decision to establish a state religion, such a constitutionally affirmed endorsement may be necessary in the face of continued undermining of the principles contained in Articles 14 and 28. As will be argued below, without such a step, the Russian President will continue to fall short of his Article 80 constitutional duty to serve as the guarantor of the Constitution and "of the rights of man and citizen."[109]

Moreover, the passage of the 1993 Constitution failed to resolve the challenges put to the Russian legislation on freedom of religion in 1993. The same actors that prompted the 1993 amendment effort did not disappear. In fact, they only gained traction and increased influence over a four-year period before returning with the same demand:[110] namely, that "new" religious movements be restrained and that the ROC alone be empowered as Russia's "spiritual shield."[111]

D. The 1997 Law on Freedom of Conscience and Religious Associations: The ROC Strikes Back

The ROC's continual effort to restrict the activities of "non-traditional" religious groups ultimately led the legislature to amend the Law on Freedom of Conscience in 1997. These amendments—widely analyzed and criticized at the time[112]—sought to place heavy limits on religious groups new to Russia and had the effect of giving the Orthodox Church as well as other "traditional" religions a privileged status in Russia. At their core, the amendments confirmed the growing and diversified political influence of the ROC,[113]

109. *Id.* art. 80.

110. Daniel & Marsh, *supra* note 38, at 7. Indeed, from the ROC's perspective, what was four more years after waiting seventy to reassert what it considered a rightful historic entitlement?

111. Shterin & Richardson, *supra* note 31, at 155.

112. *See, e.g.*, Kovatch, *supra* note 30; Bourdeaux, *supra* note 26; Juviler, *supra* note 44.

113. Nationalist Russian politician Vladimir Zhirinovsky was quoted as saying, "[I]f the Patriarch tells us to vote for some version of the bill—we'll oblige, and if he tells us not to vote—we won't!" Lekhel, *supra* note 20, at 189 n.127 (quoting Ivan Rodin et al., *Prinyat*

constrained the legal protections extended to freedom of conscience,[114] and established a de facto hierarchy of religions with the ROC poised at its apex.[115] Most observers have concluded that passage of the 1997 law served as reward for the "high level of (diffuse) support" provided by the ROC to the Yeltsin regime.[116] Bourdeaux labeled the 1997 law a "blueprint for the return of state control over religion, albeit of a different kind from that formerly exercised by the Communist Party,"[117] and he presciently identified it as "only one aspect of the gathering spirit of resentment against the West in Russia."[118]

Although Yeltsin expressed his view that the 1997 amendments contradicted the basic foundation of Russia's constitutional structure, provisions of the Constitution, and general principles and norms of international law,[119] he nevertheless assented to the draft bill. This fateful decision may have been foremost in Aleksey's mind when he recently described Yeltsin's tenure as heralding "a totally new epoch in relations between the Church and [S]tate . . . an epoch of respectful relations."[120]

In fact, much of what the amended law promulgated was already enforced in the areas of Serpukhov, Arkhangel'sk, and Astrakhan.[121] Russia's failure to implement its constitutional guarantees related to

Novyj Variant Zakona o Svobode Sovesti [*A New Version of the Law on the Freedom of Conscience is Adopted*], NEZAVISIMAYA GAZETA, Sept. 20, 1997). According to McGann, Aleksey extended "tacit support" to right-wing nationalists "as a ploy to gain political bargaining leverage." McGann, *supra* note 26, at 14–15.

114. Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 1997, No. 39, Item 4465 (Russian Federation Federal Law No. 125-FZ, "On freedom of conscience and religious associations") [hereinafter 1997 Law].

115. Juviler, *supra* note 44, at 229.

116. Hesli, *supra* note 90, at 47.

117. Bourdeaux, *supra* note 55, at 141.

118. *Id.* at 145.

119. Daniel & Marsh, *supra* note 38, at 7 (quoting Letter from Boris Nikolaevich Yeltsin, President of the Russian Federation, to G.N. Seleznev, President of the State Duma, and E.S. Stroev, President of the Federation Council (July 23, 1997), *in* Report of the Press Service of the President of the Russian Federation, *Yeltsin Threatens Not to Enforce Law if Veto Overriden*, #1997-07-23-006, *available at* http://www.stetson.edu/~psteeves/relnews/9707.html).

120. *Yeltsin Opened New Epoch in Relations Between Church and State - Alexy II*, INTERFAX, Apr. 23, 2008, *available at* JOHNSON'S RUSSIA LIST, 2008-#80, Apr. 24 2008.

121. Daniel & Marsh, *supra* note 38, at 11. The authors observe that: "Local and regional courts had few qualms about violating [the 1990 religion law when it was] seen as causing harm to Russia's cultural environment." *Id.* at 6.

religious freedom even prior to 1997 also caused the Organization for Security and Co-operation in Europe (OSCE), the largest regional security organization in the world, to take note. A November 1996 OSCE Review Meeting pointed to "systematic and gross violations of [Russia's] basic constitutional principles on the part of both federal and local governmental structures, as well as religious organizations," particularly with regard to "principles of nonestablishment and the separation between church and state."[122]

While some observers have remarked that the arrangement set forth in the 1997 law mirrors that found in a number of democratic states and therefore "does not appear to contradict international practice,"[123] one need only look to Russian domestic law—in this case, the Constitution itself—to find the contradiction. Lawrence Uzzell, who even argues "that the Western missionaries themselves have a lot to answer for, for their insensitivity in going into a place that has had thousands of years of Christianity," still concludes that "freedom of conscience is the most fundamental of all human rights [and by] violating its own [C]onstitution in this way, Russia is raising grave doubts about even its desire to become a law-governed state."[124]

While Russia's Constitutional Court has handed down a number of rulings that limit the effect of some of the 1997 law's more restrictive provisions, its deleterious effect continues to be felt. The implications of the 1997 amendments go deep into the psyche and consciousness of the nation, far beyond the implications of any ordinary legislation. Consider for example that the preamble of the 1997 law recognizes "*a special role of the Orthodox Church* in the history of Russia [and] the formation and development of its spirituality and culture . . . ." Thereafter the preamble acknowledges "respect for the Christianity, Islam, Buddhism, Judaism and other religions *constituting an integral part of the historical heritage of the peoples of Russia*."[125] Consider also that Article 4(1) of the law reaffirms that "The Russian Federation is a secular state."[126] Now reconcile this legal landscape with President Putin's response after

122. Shterin & Richardson, *supra* note 31, at 146.

123. Lekhel, *supra* note 20, at 203.

124. Hearst, *supra* note 71, at 8

125. 1997 Law, *supra* note 114, preamble (emphasis added).

126. *Id*. art. 4(1) (emphasis added).

being asked whether Russian law prohibits bestowing privileges on the ROC and calls for a secular state: "This is not the case. [Russia is not a secular state.] *The law states that Russia has four traditional religions.*"[127]

Plainly, only the preamble to the 1997 law mentions traditional religions, whereas the actual operative section (Article 4(1)) *reaffirms* the Constitution's Article 14 designation of Russia as a secular state. Ironically, even ROC spokesman Rev. Chaplin has affirmed that the "preamble . . . is not legally binding, and should rather be viewed as only a 'lyrical digression.'"[128]

Clearly, in Russia today, "it's not Law that prevails but ideological priorities of the state policy. And the Constitutional Court isn't going to oppose this policy."[129] In other words, it almost doesn't matter what the Constitutional Court does or what the Constitution says; all that matters is what the leaders believe and disseminate as fact. Indeed, in much the same way that the Putin regime moved quickly to silence its critics,[130] so too is the ROC swift to silence those within the institution who presume to criticize the government—as well as those outside targeting the ROC itself for criticism. Father Sergei Taratukhin, a Russian Orthodox priest, was defrocked for "political activity and slandering the [C]hurch leadership"[131] after declaring jailed Yukos CEO Mikhail Khodorkovsky a "victim of political games."[132] Shortly thereafter, Father Sergei decided to refute his support of Khodorkovsky. By

127. Interview by Time Magazine with Vladimir Putin, former President of the Russian Federation, near Moscow, Russia (Dec. 12, 2007). A partial video of the interview is available at http://www.time.com/time/specials/2007/personoftheyear/article/0,28804,1690753_1691763_1691291,00.html (emphasis added).

128. Vsevolod Chaplin, *Faith, Freedom and Law*, THE MOSCOW TIMES, Sept. 11, 1997.

129. Galina Krylova, The Problems of Religious Freedom in the Decisions of the Russian Constitutional Court, Paper Presented at Center for Studies of New Religions (CESNUR) Conference, Riga, Latvia (Aug. 29–31, 2000), http://www.cesnur.org/conferences/riga2000/krylova.htm.

130. Consider any number of examples: the fate of Russian investigative journalist Anna Politkovskaya, one of Putin's most vocal critics concerning the ongoing war in Chechnya, assassinated in October 2006 by a still as yet unapprehended assailant; the criminal and civil charges against Platon Lebedev and Mikhail Khodorkovsky based on fraud, tax evasion, and other allegations, but likely motivated by contributions to opposition political parties; or the ongoing campaign against NGOs critical of government policy. Blitt, *supra* note 7.

131. Higgins, *supra* note 23, at A18.

132. *Id.*; *see* Alexander Osipovich, *Piety's Comeback as a Kremlin Virtue*, THE MOSCOW TIMES, Feb. 12, 2008.

"falling to his knees in front of television cameras," he won a partial reprieve and was granted employment as a trash collector at a cathedral in the city of Chita.[133] Bourdeaux has gone so far as to claim that "[i]n recent times no bishop has criticized any aspect of Kremlin policy,"[134] and that the situation resembles "a scene reminiscent of clergy who recanted their anti-Soviet activities in former days."[135]

In spite of Russia's Constitution, the 1997 amendments signaled a formal, "legislated" return to the ROC's "traditional" vision of Russian society, whereby the Church and State maintained "a symphonic relationship [working] together harmoniously to manage worldly affairs and prepare inhabitants for entrance into the world to come."[136] It ostensibly tamed the "onslaught of destructive religious pluralism"[137] and also entrenched—by way of the "traditional" and "non-traditional" labels—a key distinction that the ROC would invoke repeatedly to differentiate itself from other religious groups.[138] This watershed event also served to make any number of subsequent developments seem almost insignificant in comparison. However, when contemplated *in toto* these developments confirm the utter breakdown of separation of church and state, the devaluation of constitutional currency (to a hypocritical point arguably reaching Soviet levels), and the stifling of religious freedom in Russia.

133. Adrian Blomfield, *Orthodox Church Unholy Alliance with Putin*, THE TELEGRAPH, Feb. 26, 2008, *available at* http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2008/02/23/wrussia123.xml. Taratukhin's job reportedly also includes "supervising . . . snow removal and other menial tasks." Higgins, *supra* note 23, at A18.

134. Bourdeaux, *supra* note 19.

135. *Id.*

136. Daniel & Marsh, *supra* note 38, at 11.

137. Lekhel, *supra* note 20, at 197.

138. According to the USCIRF, "Many of the problems faced by minority religious communities in Russia stem from the notion set forth in the preface to [the 1997 Law] that only four religions—Russian Orthodoxy, Islam, Judaism, and Buddhism—have 'traditional' status in that country." USCIRF, POLICY FOCUS: RUSSIA (2006), http://uscirf.gov/countries/publications/policyfocus/Russia.pdf.

IV. CHURCH-STATE SYMBIOSIS ON STEROIDS, 1998–2008: SO MANY RED FLAGS IN SO LITTLE TIME

A. Overview

The 1997 amendments discussed above paved the way for a series of subsequent developments that further undermined Russia's constitutional separation of church and state. Yet, in a recent article, Daniel and Marsh tacitly criticize "some analysts and journalists [who] have already rendered judgment[]" on the "major institutional forms . . . and the role of the Orthodoxy" in Russia.[139] The authors reason that these "major institutional forms *are not yet determined*, and the role of the Orthodoxy, as well as other religions within Russia's civil and political order *await definition*."[140] It is difficult to avoid taking issue with this sweeping assertion, given that Russia has *already determined*—now going on fifteen years—what its "major institutional forms" and "civil and political order" entail: a Constitution that provides for human rights guarantees, separation of church and state, a secular government, and respect for international and regional human rights norms. Nowhere in these arrangements is any room afforded for religious interference within government (or vice versa), discrimination among religious groups, or other unjustifiable differential treatment.

Moreover, if the 1997 law truly reflects "a larger battle within Russia to redefine itself,"[141] it still stands to reason that until a clear signal is sent by the legislature or president to that effect, it behooves the government—as well as the courts—to respect the rule of law and Russia's constitutional and international law obligations as they currently stand. As long as Russia's leaders continue to profess that the country remains secular or "multiconfessional,"[142] but then offer up ambiguous statements like: "Of course, we have a separation of [s]tate and [c]hurch . . . . But in the people's soul they're together,"[143] or prominently take part in Orthodox festivals,[144] they

139. Daniel & Marsh, *supra* note 38, at 15.

140. *Id.* (emphasis added).

141. *Id.*

142. Osipovich, *supra* note 132.

143. Yuri Zarakhovich, *Putin's Reunited Russian Church*, TIME, May 17, 2007, http://www.time.com/time/world/article/0,8599,1622544,00.html.

144. Weir, *supra* note 81, at 6.

should be held to account for possible violations of Russia's constitutional law as well as its regional and international obligations. Anything less than this accounting practically serves as an endorsement of the unfurling collusion between the ROC and the State to gradually, but still illegitimately, insinuate themselves into one another and rewrite the rules free from any consequences as if the outcome was in some way the result of a wholly justifiable, natural, or expected progression.

The following section examines the extent to which both the State and the ROC have overstepped defined constitutional boundaries since 1997. In the process, they have devalued Russia's constitutional text and jeopardized the country's compliance with obligations emanating from such key human rights treaties as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention. Of course, this pattern of flaunting the Constitution will be familiar to any observer of developments in Russia, particularly as applied to civil rights during Putin's tenure.[145]

Perhaps as a sign of things to come, following Yeltsin's abrupt resignation, Vladimir Putin specifically called upon Aleksey to bless the "transfer of a briefcase containing secret nuclear codes."[146] The patriarch's blessing at this crucial "transfer of power" moment made Putin the "first Russian leader to [publicly] profess his faith in God since 1917."[147] Indeed, during his presidency, Putin did much to further blur the divide between church and state and deepen the relationship between the ROC and the Kremlin. According to Reverend Chaplin, the 1990s phenomenon of *podsvechnik* (slang for politicians who pandered to the Church but lacked a deep understanding of Orthodox faith) ended under Putin's rule: "This doesn't exist anymore . . . . Among politicians, there are now more and more people who read the Gospels[,] . . . go on pilgrimages and attend [C]hurch services."[148]

Although scholars debate the need to link current government practice back to historical and traditional models of church-state relations, the more pressing concern is whether ongoing developments in this area violate existing constitutional norms.

145. *See* Blitt, *supra* note 7, Part I.

146. LaFraniere, *supra* note 24, at A1.

147. Osipovich, *supra* note 132.

148. *Id.*

Gvosdev argues that "[i]t would be nigh impossible to separate what is 'religious' from what is not," because "Orthodoxy has shaped and molded many areas of Russian cultural, spiritual, and political life."[149] To bolster his claim, Gvosdev asks:

> [A]re Rachmaninoff's liturgical compositions, for example, religious or cultural? Would performance of that Orthodox liturgical music by state-sponsored cultural organs constitute a violation of religious freedom or compromise the "secular" nature of the government? . . . The government cannot constitutionally mandate that Orthodoxy be stripped from Russian culture . . . this is an issue which ultimately lies outside the scope of constitutional law.[150]

As a rule, these would all be good questions that the Russian Constitutional Court could answer and that the European Court of Human Rights (ECHR), at least to the extent that they raise questions related to Russia's regional human rights treaty obligations, could further clarify. However, given the real circumstances as they exist today, these are the wrong questions to ask. More appropriately, the following section focuses not on the contrived, hypothetical, easy questions, but rather, on the real, constantly unfolding questions that are responsible for diminishing respect for Russia's constitutional text and its international commitments: In Russia today, is it constitutionally acceptable for government agencies to request patron saints from the ROC or build new Orthodox churches on government land? Is it acceptable to have religion or morality courses in public schools that promote one religious ideal above others and say nothing of the religious beliefs that do not rise to the level of "traditional"? Is it permissible to discriminate against a religious group because it is considered "non-traditional"? These questions are far more urgent, concrete, and indicative of the struggle confronting Russia today. These are the questions that need to be answered, no matter how intriguing a theoretical debate about the nature of Rachmaninoff's oeuvre may be.

149. Gvosdev, *supra* note 103, at 533.

150. *Id.*

B. Infiltration of Religion into Government

Although Russia's constitution provides for separation of church and state, religious practices infiltrated Putin's government in an unprecedented manner. According to both critics and supporters of the ROC, under Putin, "government officials [became] more pious—at least outwardly—and . . . deepened their contacts with the [C]hurch hierarchy."[151] This development defies the Constitution's separation of church and state and its guarantees of equality and nondiscrimination between religious groups. Moreover, like Putin's swearing-in ceremony, these examples also contradict the same 1997 Law on Freedom of Conscience supported by the ROC. Article 4(4) of that law provides that:

> The activity of agencies of state power and . . . local administration [shall] not [be] accompanied by public religious rites and ceremonies. Officials of state power, or of other state agencies, or of agencies of local administration, as well as military figures, [shall] not have the right to use their official status for advancing one or another religious affiliation.[152]

When the United States government called attention to the apparent overlap between church and state in Russia, the ROC was quick to clarify in the form of a missive from Metropolitan Kirill[153] to Secretary of State Condoleezza Rice:

> The fact that His Holiness Patriarch [Aleksey] II has a seat of honour when the President of the Russian Federation addresses the Federal Assembly of the Russian Federation does not entail any concrete consequences for a church-state relationship. I would like to note that various customs are the background of protocol order in different countries. It is a long-standing tradition to give prominence to people who enjoy considerable authority and

151. Osipovich, *supra* note 132.

152. 1997 Law, *supra* note 114, art. 4(4).

153. KGB archive materials indicate that Kirill also served as a KGB agent under the codename "Mikhailov." As Dunlop notes, "[I]t should be stressed that an 'agent' of the former KGB was considerably more than an informer; he or she was an active operative of the Committee for State Security, in effect a nonuniformed officer of that organization." Dunlop, *supra* note 38, at 30. For additional discussion regarding KGB infiltration of the ROC, see *supra* Part II.

> respect of their fellow citizens. They could be state heroes, persons involved in the arts and science, sportsmen, or religious leaders.[154]

Kirill's response to the State Department's International Religious Freedom Report is nothing more than an effort at sleight of hand, and a poor one at that. Rather than address the implications of granting a seat of honor to the leader of a single religion in a multi-confessional and officially secular country, he likens Aleksey to a sportsman. For better or worse, Russia's Constitution is silent with regard to separation of sport from state; it is not, however, silent on the topic of religion. Surely, any "concrete consequences" for Russia's Constitution ought to be determined by a court rather than by a Church functionary.

In any case, there is no shortage of illustrations underscoring the troubling implications of deepening church-state contacts in Russia. For example, Igor S. Ivanov, Russia's foreign minister between 1998 and 2004, and secretary of the National Security Council until July 2007, allegedly required that all of his staff members be baptized before they could work for him.[155] Along a similar line, the Moscow City Court and the Prosecutor General's Office now maintain Orthodox chapels on their premises.[156] The Church of St. Sofia of God's Wisdom, "a small structure off Lubyanskaya Ploshchad . . . happens to be the official church" of the Federal Security Service (FSB), the KGB's successor agency.[157]

In addition to building official churches, government agencies often adopt their own special prayers. The FSB, for example, now beseeches "Saint Alexander Nevsky [to] help the agency defeat 'all visible and invisible enemies . . . .'"[158] Not to be outdone, members of the Defense Ministry have attended special ROC services in the Cathedral of Christ the Savior. A formal blessing for the "rank-and-

154. Metropolitan Kirill, *An Open Letter to the U.S. Secretary of State Condoleezza Rice*, *in* 80 EUROPAICA BULLETIN, Dec. 6, 2005, http://orthodoxeurope.org/page/14/80.aspx#5.

155. Christopher Marsh, BYU Conference on International Religious Freedom, Panel on Russia, (Oct. 2008); *see also* Christopher Marsh, *Orthodox Spiritual Capital and Russian Reform*, *in* SPIRITUAL CAPITAL IN DEVELOPING SOCIETIES (Gordon Redding ed.) (forthcoming) (on file with author).

156. Zarakhovich, *supra* note 143. The Moscow City Court was custom-built in 2004. Alexander Osipovich, *Bumpy Ride in Drive To Reshape Society*, THE MOSCOW TIMES, Feb. 12, 2008.

157. Osipovich, *supra* note 132.

158. Peter Finn, *Saints in Demand in Russia as Church Asserts Tie to State*, WASH. POST, Apr. 20, 2007, at A24.

file" of the 12th Main Directorate, the agency responsible for overseeing Russia's consolidated nuclear arsenal (Navy, Air Force, and rocket-based),[159] followed the services. In addition, the ROC officially designated the Orthodox saint, St. Seraphim of Sarov, as "the spiritual patron-protector" of Russia's nuclear arsenal and bestowed an "Orthodox Church flag with the icon of St. Seraphim" on the 12th Directorate.[160] This was not the first time that the Church had bestowed blessings on Russia's military. Patriarch Aleksey II blessed the Russian army prior to its advance on Chechnya.[161] The ROC also has been invited to bless "submarines, armaments, and boundary posts," among other sundry items.[162] When asked during an interview whether he thought it was inappropriate for the Church to bless "all kinds of weapons," Metropolitan Kirill replied, "Priests do that when they are asked,"[163] as if a request from the government made it all constitutionally valid, or at least cleared the ROC of any complicity in undermining constitutional secularism in Russia.[164]

Indeed, ROC connections with the military go deeper and are more pervasive than formal ceremonies alone. Although Russia lacks a law permitting military chaplains, according to the ROC, more than 2000 Orthodox priests minister to soldiers on a voluntary, unofficial basis. The Patriarchate even maintains a military liaison department. "Putin has endorsed the practice, while saying that freedom of religion should be protected."[165] Yet, what has unfolded is a situation in which other religious groups are shut off from accessing the military, and "[o]nly the Orthodox clergy are entitled to give ecclesiastic guidance."[166] In other words, the ROC preserves

159. *Transcript: General Habiger Press Briefing on Trip to Russia*, USIS WASH. FILE, June 24, 1998, http://www.fas.org/news/russia/1998/98062407_wpo.html.

160. Pavel Felgenhauer, *General Declares Russian Nukes Secure*, JAMESTOWN FOUND. EURASIA DAILY MONITOR, Sept. 20, 2007; *see also* Viktor Yuzbashev & Pavel Krug, *Armed Forces: A Prayer to Nuclear Weapons: Anniversary of the Most Secret RF Defense Ministry Directorate*, NEZAVISIMOYE VOYENNOYE OBOZRENIYE, Sept. 19, 2007.

161. Bourdeaux is more blunt: "Patriarch [Aleksey] II has on several occasions blessed the Russian Army, most notably when it was about to descend on Chechnya, to destroy Grozny, the capital, and beat the local people into submission." Bourdeaux, *supra* note 19.

162. Gaskova, *supra* note 36, at 119.

163. Spiegel Online International, *supra* note 52.

164. Metropolitan Kirill's reaction also hints at the ROC's compliancy and utter inability to meaningfully criticize government policy.

165. Osipovich, *supra* note 132.

166. Zarakhovich, *supra* note 143.

a protected monopoly in this area despite the unavoidable reality that members of other religious groups also serve in Russia's military.[167] What makes this special treatment even more remarkable is the fact that members of these other religious groups include Muslim citizens, who by 2015 are predicted to "make up a majority of Russia's conscript army, and by 2020 a fifth of the population."[168]

The Defense Ministry is not the only state body or agency that has coveted a patron saint, and the ROC has willingly responded to the demand. The FSB and Rus (a police special forces unit operating in Chechnya) have bickered over which group will get saint Alexander Nevsky, a legendary thirteenth-century military commander. In addition, "the Strategic Rocket Forces, which oversee Russia's land-based nuclear missiles, have Saint Barbara, the tax police have Saint Anthony, the Border Guards have Saint Ilya Muromets and the Ministry of Interior's troops have Saint Vladimir, among dozens of other examples."[169]

Moreover, several years ago the Church successfully lobbied to create a new national holiday, People's Unity Day. This new holiday, celebrated on November 4, replaced the former Communist holiday commemorating the anniversary of the 1917 October Revolution that was celebrated on November 7. Before 1917, November 4 was a Church holiday honoring the Kazan Mother of God icon, a symbol of the end to the "Time of Troubles" and Polish occupation of Moscow. "The initiated, however, also know that [November 4] has another significance: on almost the same day [in] 1721, the Senate

167. *See* Osipovich, *supra* note 132 (acknowledging that military chaplains can be legally recognized in countries with separation of church and state).

168. Michael Mainville, *Russia Has a Muslim Dilemma Ethnic Russians Hostile to Muslims*, S.F. CHRON., Nov. 19, 2006, at A17, *available at* http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/11/19/MNGJGMFUVG1.DTL; *see also* Rozan Yunos and Bandar Seri Begawan, *Russia 20% Muslim by 2020*, THE BRUNEI TIMES, July 27, 2007, *available at* http://www.bt.com.bn/en/features/2007/07/27/russia_20_muslim_by_2020. Others claim these estimates are too high. According to Roman Silantyev, a "Russian islamologist," [sic] "The most widespread estimation of [twenty] million Muslims is unrealistic . . . the most serious myth." Roman Silantyev, *20 Million Muslims in Russia and Mass Conversion of Ethnic Russians are Myths—Expert*, INTERFAX, Apr. 10, 2007, http://www.interfax-religion.com/?act=news&div=2869. Nevertheless, Russia is confronting a population decline of "at least 700,000 people each year, leading to slow depopulation of the northern and eastern extremes of Russia," primarily composed of white ethnic Russians. Steven Eke, *Russia Faces Demographic Disaster*, BBC NEWS, June 7, 2006, http://news.bbc.co.uk/2/hi/europe/5056672.stm.

169. Finn, *supra* note 158, at A24.

proclaimed Peter the Great an emperor and transformed the country into the Russian Empire."[170]

To be certain, adoption of Orthodox symbols and prayers by public entities—as well as religiously-inspired holidays and ROC presence at official state events—blatantly promotes the interest of one religious community at the expense of official secularism. But it also serves to alienate other religious groups as well as all those who seek to give real meaning to Russia's constitutional tenets. While some of these developments may strike the reader as charming or even harmless, each incident in fact creates another crack, another tear, another fissure in the deteriorating wall separating church and state in Russia, particularly when viewed in totality alongside the list of parallel incidents discussed below pertaining to government policy.

C. Common Policy Visions

The fact that Putin's regime and the ROC shared virtually uniform policy views and objectives on a host of issues both explains and buttresses the cozy relationship between church and state. ROC leaders "seem perfectly willing to lend their support to the Kremlin. They . . . consistently backed Putin as he . . . retreated from Western liberal values, cracked down on critics and built up the power of the [S]tate."[171] According to Reverend Chaplin, "Putin regularly consults [Aleksey] on domestic issues and . . . [C]hurch leaders talk almost daily with Putin's aides."[172]

1. On human rights

Russia's mounting rejection of international human rights standards can be traced back to a number of mutually reinforcing sources. As Schlafly has observed, "While veneration of national-religious defense against a foreign invader can be found in other

170. Victor Yasmann, *The Soft-Power Foundations of Putin's Russia*, RADIO FREE EUROPE RADIO LIBRARY, Nov. 9, 2007, http://www.rferl.org/featuresarticle/2007/11/1C18A48D-DC41-41B4-88E3-E94459ECC104.html.

171. Osipovich, *supra* note 132. Even editorial cartoonists are not immune from the crackdown on regime critics. See Shaun Walker, *No Laughing Matter: Cartoons and the Kremlin*, INDEPENDENT, Apr. 30, 2008, http://www.independent.co.uk/news/europe/no-laughing-matter-cartoons-and-the-kremlin-818063.html. This reality also plays into Putin's general control over the media, discussed *infra*.

172. LaFraniere, *supra* note 24, at A1.

countries . . . the consistency and intensity of Russian perceptions of a Latin Western threat, at once religious, cultural, and military, has no parallel."[173] Given that the Western threat is perceived as operating across a variety of levels, it is not surprising to find that Putin's government and the ROC consistently articulated a shared vision that is insular, relativist, confrontational, and contrary to the standards set forth in international and regional obligations and undertakings. Metropolitan Kirill has insisted that international and domestic law in the field of human rights must be developed with due consideration of religion's role in society: "Otherwise, alienation and opposition of the major part of humanity to current global processes will only grow."[174] As part of a recent global "offensive" on human rights, Kirill urged members of the UN Human Rights Council to support the establishment of a consultative religious council at the UN for the purpose of policing human rights norms development, particularly as they might interfere with cultural tradition and morality.[175] In Kirill's view, this interference is already afoot:

> [T]he human rights concept is used to cover up lies, falsehood and insults against religious and national values. Moreover, the catalogue of human rights and freedoms is gradually being augmented by ideas which conflict not only with Christian but also with the traditional moral understanding of the person. This is alarming since behind human rights stands the compulsory force of the [S]tate, which can compel people to commit sin, sympathize with or allow sin to occur through banal conformity.[176]

Kirill continues to argue that this interference is driven by Western norms:

173. Schlafly, *supra* note 8, at 139.

174. *Bishop's Council of the Russian Church to Adopt a Document on Human Rights*, INTERFAX, Mar. 19, 2008, http://www.interfax-religion.com/?act=news&div=4421.

175. *See, e.g.*, Metropolitan Kirill, Address to the 7th session of the UN Human Rights Council during the panel on "Intercultural Dialogue on Human Rights" (Mar. 18, 2008) (audio file available at http://www.un.org/webcast/unhrc/archive.asp?go=080318).

176. Metropolitan Kirill, *Human Rights and Moral Responsibility, Part I*, *in* 97 EUROPAICA BULLETIN, May 23, 2006, http://orthodoxeurope.org/page/14/97.aspx#3.

> There is an opinion that human rights are a universal norm.[177] According to this view, there can be no Orthodox, Islamic, Buddhist, Russian or American concept of human rights since this would introduce relativity into the understanding of human rights, thus considerably restricting their functioning in international life . . . . The point is that this concept was generated and developed in Western countries, with their unique historical and cultural destiny.[178]

Aleksey II has advocated a similar viewpoint in a recent address to the Parliamentary Assembly of the Council of Europe (PACE):

> [T]oday there occurs a break between human rights and morality, and this break threatens the European civilization. We can see it in a new generation of rights that contradict morality, and in how human rights are used to justify immoral behavior . . . . If we ignore moral norms, we ultimately ignore freedom too . . . [I]n [the] public sphere, both state and society should encourage and support moral principles acceptable for the majority of citizens. Therefore they should use mass media, social institutions, and education system to pursue the moral ideals that are linked with spiritual and cultural tradition of the European nations.[179]

This type of talk is in fact thinly veined rhetoric aimed at justifying special status for the ROC in Russian society and downgrading "universal" human rights—particularly individual rights—to a level deemed acceptable to the Church and consistent with its vision for Russia. Not surprisingly it matches up seamlessly with the approach taken by the Russian government. Objecting to the release of a United States human rights report, Russia's Ministry of Foreign Affairs asserted: "[W]e are convinced in the

177. It is impossible to ignore the fact that in this one sentence, Metropolitan Kirill reduces instruments including the Universal Declaration of Human Rights—together with everything it has come to embody over sixty years—to a mere "opinion."

178. Kirill, *supra* note 176. To be sure, this perspective has resulted in some stilted positions on the part of the Church. Consider the ROC's recent criticism over the West's "undue" attention to the human rights situation in Tibet. According to Reverend Chaplin, Western media is manipulating the situation in Tibet to advance the political interests of the West, since there are many other conflicts in the world that "claim many more casualties and victims than the number of people killed recently in Tibet" but don't get the same attention. *Moscow Patriarchate Slams Coverage of Tibet Unrest in Western Media*, INTERFAX, Mar. 27, 2008, http://www.interfax-religion.com/?act=news&div=4457.

179. Patriarch Aleksy II, The Address of Patriarch Aleksy II of Moscow and All Russia to the PACE (Oct. 3, 2007) (transcript available at http://www.pravmir.com/article_246.html).

inadmissibility of the use of the ideas of democracy and human rights as a cover for interference in internal affairs."[180] This stance comes directly from Putin, who previously has remarked that "when speaking of common values, we should . . . respect the historical diversity of European civilization. It would be useless and wrong to try to force artificial 'standards' on each other."[181]

These statements—couched in terms of historical and cultural difference—together with the ROC's endorsement of them are contrary not only to the object and purpose of the ECHR (and Russia's other international obligations), but also flout Russia's express commitment that domestic human rights can no longer be made subject to a rule of non-intervention in the internal affairs of a country. As part of the OSCE's human dimension policy, participating states (including Russia) have agreed, *inter alia*, that:

> [I]ssues relating to human rights, fundamental freedoms, democracy and the rule of law *are of international concern*, as respect for these rights and freedoms constitutes one of the foundations of the international order. *They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the OSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.*[182]

While this undertaking may not rise to the level of a legally binding norm, it remains politically binding on the state party. In the OSCE's words, the "distinction is between legal and political and not between binding and non-binding . . . OSCE commitments are more than a simple declaration of will or good intention; they are a political promise to comply with these standards."[183]

The vision of shirking from or attempting to redefine basic international human rights norms shared by the ROC and Russian

180. Blitt, *supra* note 7.

181. *Id.*

182. *Document of the Moscow Meeting of the Conference on the Human Dimension of the OSCE*, preamble (Oct. 3, 1991) (emphasis added). The USSR was admitted to the OSCE on June 25, 1973. Russia signed the Charter of Paris on Nov. 21, 1990. *See* OSCE, About Participating States, http://www.osce.org/about/13131.html#R. Background on the origin of this provision is provided in Jean-Rodrigue Paré, *The OSCE in 2006*, PARLIAMENTARY INFORMATION AND RESEARCH SERVICE OF CANADA (PIRS), Revised Feb. 9, 2006, http://www.parl.gc.ca/information/library/PRBpubs/prb0522-e.htm.

183. OSCE, Politically Binding Commitments, http://www.osce.org/odihr/13493.html (last visited Aug. 13, 2008).

government is not limited to the purpose of minimizing scrutiny of Russia's internal affairs. With respect to external developments, the ROC is also quick to support the Russian government and reiterate its view that human rights is a harmful Western concept used as a tool to trample on otherwise valid cultural and historical traditions. Consider Metropolitan Kirill's remarks in the wake of Kosovo's declaration of independence:

> Certain countries often use human rights as a tool to promote their national interests . . . . [Such situations] foment tensions in the world and sow prejudices regarding human rights . . . . Certain countries are behaving absolutely undemocratically in considering their human rights enforcement systems universal. Using direct or indirect methods, they are trying to impose their standards on other peoples or become the only judges in the human rights area.[184]

2. On non-governmental organizations

Kirill's reference to outsiders using "direct or indirect methods" as a means of "imposing" standards links directly to Russia's policy on nongovernmental organizations (NGOs). Putin's 2004 State of Union accused some NGOs of "obtaining funding from influential foreign or domestic foundations" or of "servicing dubious group and commercial interests."[185] Not to be outdone, Kirill described these NGOs as "people who are professionally fighting the [ROC]; who don't love Russia, to put it mildly,"[186] and suggested that Russia "reserves the right to deviate from international human rights norms to correct the 'harmful emphasis' on 'heightened individualism' which has infiltrated Russian society under the cover" of NGOs.[187]

Given the shared concern over the harmful impact "[W]estern-driven" NGO activities may have on the fragile fabric of Russian society, it is not difficult to imagine the ROC's eager endorsement of the 2006 amendments to Russia's law governing these

184. *Russian Church Criticizes Kosovo's Recognition as Independent State*, INTERFAX, Mar. 19, 2008, http://www.interfax-religion.com/?act=news&div=4418.

185. Ludmilla Alexeyeva, *Putin's Definition Of Democracy?*, WASH. POST, June 8, 2004, at A23.

186. Osipovich, *supra* note 132.

187. USCIRF, *Challenge to Civil Society: Russia's Amended Law on Noncommercial Organizations*, 6–7 (Mar. 22, 2007) http://www.uscirf.gov/images/stories/pdf/russia_ngo_report_final_march5_ru-formatted%20for%20web.pdf.

organizations.[188] What must have been disconcerting, however, was the heavy-handedness of the government's "spray and pray" approach to regulation, whereby it drafted an overbroad law in the hope of having it cover all possible eventualities. In a letter to the Federal Registration Service—the agency tasked with enforcing the amended NGO law[189]—Russian Orthodox Archbishop Nikon (Vasyukov) of Ufa and Sterlitamak summed up the ROC's mixed feelings regarding its hearty endorsement of the government effort to regulate NGOs on the one hand, and its utter confusion on the other:

> We understand the [S]tate's close interest in the activity of all types of social and so-called "human rights" organisations which . . . are actively financed by foreign secret services and openly conduct provocative and anti-Russian activity, but it is completely incomprehensible why this interest has been transferred to the activity of traditional religious organisations like the [ROC] . . . In our opinion the accounting [requirements] stipulated [in the amended law amount] to state interference in the activity of religious organisations unprecedented since Soviet times.[190]

Not insignificantly, the amended NGO law compelled all religious organizations to report on "how many parishioners attend every service, how much parishioners give to their religious organizations, and what is discussed at meetings of senior religious officials."[191] According to Ksenia Chernega, an attorney for the ROC, the Church would "experience great difficulties" with the new

188. Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2006, No. 18FZ (on Introducing Amendments to Certain Legislative Acts of the Russian Federation), *amending* Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 1996, No. 7-FZ (on Nonprofit Organizations), *available at* http://www.legislationline.org/legislation.php?tid=2&lid=644&less=false. See also a series of similar amendments for Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 1995, No. 82-FZ on Public Associations, available at http://www.legislationline.org/legislation.php?tid=2&lid=640&less=false. For a detailed discussion, see Blitt, *supra* note 7.

189. Known in Russian as *Rosregistratsiya*.

190. Geraldine Fagan, *Religious Organisations NGO Law Financial Accounting Simplified*, FORUM 18 NEWS SERVICE, Apr. 17, 2007, *available at* http://www.forum18.org/Archive.php?article_id=943. It is worth calling attention here to Archbishop Nikon's use of the term "traditional" religious organizations as those being entitled to a waiver of reporting obligations. Clearly, the ROC would be happy to leave "nontraditional" religious groups saddled with the task of full reporting and Soviet-style state interference.

191. *Religious Groups Get a Waiver*, MOSCOW TIMES, Mar. 12, 2007.

reporting system and could not "be put on the same footing as other NGOs."[192]

Predictably, the ROC—along with virtually every other religious organization in Russia—vigorously lobbied the government in protest. In response, the government formed a commission chaired by then First Deputy Prime Minister Dmitry Medvedev to discuss an exemption for religious organizations from the NGO law's reporting requirements. A subsequent decree issued on April 10, 2007 promulgated new regulations for religious organizations that waived the most onerous accounting requirements.[193]

At first glance, it appears that the government and the ROC did not see eye to eye on the precise scope of the campaign against NGOs in Russia. Clearly, the ROC had no inclination that regulation of NGOs—"provocative" and "anti-Russian" enemies of the state and church—would implicate its own institutional autonomy. One could speculate as to how the decision to scrutinize religious organizations under the amended NGO law came about. For example, was it part of a conscious government effort to seek access to the ROC's—and other religious organizations'—financial and parishioner data? Or was it simply the result of an innocent if overzealous bureaucratic oversight? Regardless of the outcome of this inquiry, an understanding of the ROC's rising influence in Russia, and particularly its thickening ties to the government, make it

192. *Government to Try Out New Methods of Church Control*, KOMMERSANT, Dec. 8, 2006, *reprinted in Russia: Religious Organizations Appeal New Accountability*, HUMAN RIGHTS WITHOUT FRONTIERS PRESS SERVICE (Willy Fautré ed., 2006). To be certain, the ROC wasn't the only religious organization concerned with the new reporting requirements. Rabbi Zinovy Kogan, chairman of the Congress of Jewish Religious Communities and Organizations in Russia, observed that "[c]ertainly the new accounting rules [were undoubtedly] an encroachment," and Ravil Gainutdin, chairman of the Board of Muftis of Russia, commented that "such [controlling measures were] monitoring [and was] unacceptable in democratic conditions . . . . The [S]tate has only one responsibility—that of registering a religious organization, not of counting up its worshippers and the money collected . . . . The [S]tate's business is to register a religious organization, not to count how many people come or how much money they give." *Id.* (modified quotes are available in the original press report at http://www.kommersant.com/p728559/r_1/noncommercial_organizations_religious_freedom/).

193. *Id.* According to the new reporting form, instead of specifying types of activities, objectives, and number of participants, religious organizations only have to indicate whether they have "conducted religious rites, preaching, education, literature distribution, pilgrimage, charitable work and/or 'other' activities." *Id.* Religious organizations must still "account for donations made by outside organizations as well as for 'use of other property'." *Id.*; *see also* Fagan, *supra* note 190.

impossible to interpret the government's move to later amend the law as anything but an overt appeasement and a means of securing continued ROC support of the Putin government and its policies. One could also reason that the government's decision to extend the waiver to all religious groups, rather than only the ROC or the "traditional" religions, is evidence of an even-handed approach to religious organizations. This might be the case, but for the undeniably massive scrutiny imposed on Russia by the international community in the lead up to the NGO law's implementation.

Along a similar line of reasoning, one might point to the waiver campaign waged by various religious organizations and suggest that the ROC is willing and prepared to work side by side with other religious organizations to safeguard its own precious religious freedom. This perception would be gravely mistaken for a number of reasons. First, the ROC would not entertain the idea of operating on the same plane as "non-traditional" religious organizations (let alone unrecognized religious groups). Second, while the ROC may engage the "traditional" religious faiths (Christianity, Islam, Judaism and Buddhism) on certain easy consensus issues such as drugs and alcohol abuse,[194] that veneer of cooperation quickly fades in the face of more contentious issues such as Orthodox education in public schools and Orthodox-only access to the military for preaching purposes. Finally, if the ROC was exempt from scrutiny, it certainly would not have bothered to intervene on behalf of other religious organizations caught in the NGO law's onerous web. In this regard, Archbishop Nikon's views are revealing.[195]

3. On crafting foreign policy

Another area of notable overlap between church and state is demonstrated by recent foreign policy developments in Russia. Most dramatically, the government has begun, in a throwback to Communist days, to actively use the ROC as a means of strengthening Russia's "secular power." In September 2007, Putin aide Sergei Prikhodko breathlessly announced that "an important event will take place on the eve of Putin's visit to Abu Dhabi: a sanctification of the corner-stone of a [ROC] temple, the first in the

194. Some of this work is done through the framework provided by the Inter-Religious Council of Russia.

195. *See* Fagan, *supra* note 190 and accompanying text.

Arabian Peninsula. It will be built in the Emirate of Sharjah."[196] The stone-laying ceremony would be overseen by Metropolitan Kirill and attended by the Russian president's special representative in the Middle East and Deputy Foreign Minister, Alexander Saltanov. Prikhodko went further: "This is a historic event when an orthodox temple will appear in this part of the world. Erection of the temple is a decision, taken by the Emirates, indicating the attitude to Russia as a whole. *Therefore, this is a very important event even for Russia's secular power*."[197]

This event is also significant insofar as it demonstrates the Russian government and the ROC operating hand-in-hand to advance Russia's foreign policy and expand the global operations of the Church. Acting in this way, the ROC appears to violate the spirit, if not the letter, of its *Basis of the Social Compact*, discussed below. Moreover, the readiness of ROC officials to allow the solemn occasion of a cornerstone-laying ceremony to be associated with temporal government power treads uncomfortably close to reviving the Church's not-too-distant communist legacy of acting internationally as "practically a subsidiary [or] a sister company of the KGB."[198]

This stark possibility is actually reinforced by President Putin's successful efforts in 2007 to reunite the ROC with the US-based Russian Orthodox Church Abroad (ROCA).[199] In Putin's words, the "revival of the [C]hurch's unity is a crucial precondition for restoring the unity of the entire Russian world, which has always seen Orthodoxy as its spiritual foundation."[200] Yet, approximately 100 members of the ROCA's clergy—just under one-third of the total number—rejected the merger because of lingering concerns that the

196. *Putin's visit to UAE to consolidate RF's positions in Arab world*, ORGANISATION OF ASIA PACIFIC NEWS AGENCIES, Sept. 4, 2007.

197. *Id.* (emphasis added).

198. Higgins, *supra* note 23, at A1. See discussion *supra* Part II, and especially *supra* notes 23–26.

199. Alexander Osipovich, *Pushing 2 Churches Closer to Each Other*, THE MOSCOW TIMES, Feb. 12, 2008. Russian émigrés founded the ROCA in the 1920s after severing all ties with the Moscow Patriarchate in response to Patriarch Sergy's decision to swear loyalty to the communist government. Thereafter, the term "*sergianstvo*" or sergeyism was used to describe the ROC's overly deferential relationship to the Russian government. *See also supra* Part II.

200. Russia & CIS Presidential Bulletin, *Putin Calls Restoration of Russian Church's Unity Historic Event*, INTERFAX, May 17, 2007, http://www.interfax.com/3/272037/news.aspx.

Moscow Patriarchate remained "too steeped in the Soviet-era tradition of pleasing the [S]tate."[201] According to at least one press account, some dissenting priests raised concerns that the ROCA's infrastructure would now be used "to expand the spying capabilities of the FSB."[202] This move to reunite the ROCA and ROC, whether a pet project or strategic objective of Putin, dramatically expands the ROC's international presence, and in turn it provides a significant benefit to the Kremlin.

In addition to joint diplomatic endeavors with the State, the ROC maintains a very active external relations department that hosts visiting ambassadors and other high-level personalities.[203] Moreover, ROC representatives have sought to develop relationships with various international and regional fora, including the United Nations, Council of Europe, and OSCE. To what extent these undertakings are wholly independent from the State—particularly given the remarkable overlap in policy approaches between the two—remains to be seen. However, it is noteworthy that in a survey of "Info-Digests" prepared by Russia's Permanent Mission to the UN over the past year, only a single issue from a total of forty-four broke from an otherwise unwavering focus on government speeches, spokespersons or representatives.[204] That single issue heralded Metropolitan Kirill's March 18, 2008 address during a panel sponsored by the UN Human Rights Council on "Intercultural Dialogue on Human Rights."[205]

201. Osipovich, *supra* note 199.

202. *Id.*

203. *See, e.g.*, Press Release, Press Service of the Moscow Patriarchate, Sostoyalas Vstrecha Predstoyatelya Russkoy Pravoslavnoy Tserkvi s Novim Poslom Respublicii Yemen v Rossii (Mar. 4, 2008) *available at* http://www.patriarhia.ru/db/text/373429.html (publicizing meetings with Yemen's new ambassador to the Russian Federation, meeting with the French ambassador, and a farewell meeting with U.S. Ambassador William Burns).

204. The list of "Info-Digests" is available from the Permanent Mission's website at http://www.geneva.mid.ru/digests/digests.html. The period covered runs from March 15, 2007 to March 19, 2008.

205. Permanent Mission of the Russian Federation to the United Nations, *Metropolitan Kirill of Smolensk and Kaliningrad will Address the 7th Session of the UN Human Rights Council*, 18 INFO DIGEST, Mar. 14, 2008, *available at* http://www.geneva.mid.ru/digests/digests.html.

D. ROC Opposition to Criticism of the Regime

Internal criticism within the Church of the ROC's intimacy with the Russian government generally leads to ostracism or other punishment. According to Bourdeaux, "the Moscow Patriarchate acts as though it heads a state church, while the few Orthodox clergy who oppose the church-state symbiosis face severe criticism, even loss of livelihood. In recent times no bishop has criticized any aspect of Kremlin policy."[206] Arguably, one could reason that Archbishop Nikon's critique of the NGO law's reporting requirements as amounting to "state interference" qualifies as evidence that the ROC is capable of government censure. However, Nikon's "outrage" doesn't exactly rise to the level of criticism given that he heartily endorses the government's policy and reserves "criticism" only for the fact that the law dares apply to the ROC. Indeed, all the evidence points to a church that stifles internal criticism of the regime (recall the fate of Father Sergei Taratukhin[207]) and denounces external criticism of the regime (recall the Church's reactionary criticism of NGOs). In the words of one journalist, "[The] intimate alliance between the Orthodox Church and the Kremlin [is] reminiscent of czarist days. Rigidly hierarchical, intolerant of dissent and wary of competition, both share a vision of Russia's future—rooted in robust nationalism and at odds with Western-style liberal democracy."[208]

True to form, the ROC views its position quite differently from the reality depicted here. According to Aleksey II:

> If the Church begins interfering in state affairs, it is natural that the state will meddle in the affairs of the Church. And we know well what this leads to. The Church must be in fact completely separated from the state. Only then will it be able to appraise events taking place in the country from the positions of spirituality and morality. *Only then will it be able to testify to the truth and, among*

206. Bourdeaux, *supra* note 19.

207. *See* Blomfield, *supra* note 133 and accompanying text.

208. Higgins, *supra* note 23, at A1. During czarist rule, the Church "was a committed supporter of the imperial rallying cry 'orthodoxy, autocracy and nationhood.'" Blomfield, *supra* note 133.

> *other things, to tell the truth to the government instead of unconditionally supporting it.*[209]

But even with an appreciation for the sentiment encapsulated above, it is difficult to find a legitimate instance whereby the ROC told the government "the truth." The ROC did not speak out against problems in Chechnya, and it failed to speak out against restricting or denying religious rights to groups seeking to practice their faith free from government obstacle or hindrance. As McGann rightly observes, "Not only would such criticism evidence a break with the tradition of subordination and a corresponding rise in [C]hurch authority; but it would also indicate that [Aleksey's] [C]hurch could stand outside and above the politicking and competition for favors that are so characteristic of Russian politics today."[210] Indeed, there is virtual consensus that under Aleksey's leadership, "the [C]hurch has continued to walk in near lockstep with the secular Russian [S]tate, parroting the Kremlin line" at each turn.[211] In this context, the ROC has failed to live up to the Orthodox concept of *sobornost*, an early nineteenth-century ideal which posited that "the [C]hurch has a dual responsibility: to serve as a government critic, but also to submit to and to support just rulers."[212] Moreover, the ROC has gone even further; it now actively attempts to drown out those who would presume to criticize the government.

E. State Opposition to Criticism of the Church and Promotion of Its "Cultural" Vision

In exchange for its unflagging support of the State, the ROC has reaped its own benefits, including state protection and favoritism despite constitutional norms to the contrary. Prior to the recent reunification with the ROCA,[213] the ROC actively sought to minimize the ROCA's efforts to expand its jurisdiction into Russia. For example, at the instigation of the Patriarchate, civil authorities in Russia refused to register Free Orthodox parishes being supported by

209. Vladimir Shevelev, *Interview: Patriarch of Moscow and All Russia Aleksy II*, MOSCOW NEWS, Apr. 22, 1994 (emphasis added).

210. McGann, *supra* note 26, at 15.

211. LaFraniere, *supra* note 24.

212. Hesli, *supra* note 90, at 47.

213. *See supra* Part IV(C)(3).

the ROCA as part of its effort to build a foothold in the country.[214] Similarly, allegations were raised that KGB agents and police "used violence against believers who wanted to have a priest of the Free Orthodox Church."[215] In St. Petersburg, a priest "was persecuted with the cooperation of the city authorities for establishing a parish of the Free Orthodox Church in an abandoned monastery church, while the metropolitan of St. Petersburg threatened his parishioners with excommunication."[216] In a similar manner, the Russian government has denied visas to foreign religious workers and expelled foreign-born Catholic bishops in an attempt to limit the influx of foreign religions and implement a policy of "one city one bishop." This policy permits "only one bishop—from the [ROC]—in any city."[217] This practice has drawn the attention of the PACE and others. According to a 2002 PACE Committee report:

> [T]he [ROC] sometimes plays a very dominant role and is often seen to be the cause of discrimination in the implementation of the [1997 law on religion]. Moreover, the concept of "canonical territory", which the Orthodox Church often uses . . . to refer to a region or a so-called "traditional" religion which allegedly has different ([i.e.] more extensive) rights than other religions, is unacceptable by human rights standards as we in the Council of Europe understand them.[218]

More recently, "Roman Catholics, Protestants, Old Believers, Molokans, and other alternative Orthodox communities" continue to report difficulties in obtaining permission to build houses of

214. Armes, *supra* note 23, at 80.

215. *Id.*

216. *Id.*

217. Baradaran-Robison, *supra* note 28, at 917.

218. PACE Committee on Culture, Science and Education, *Opinion on Russia's Law on Religion*, Doc. 9409 ¶ 2(5) (Apr. 16, 2002), *available at* http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc02/edoc9409.htm. The Committee report concluded that it "is unacceptable for local officials to send people e.g. to the Russian Orthodox Church for approval on any course of action in the religious field before giving their own approval." *Id.* The Committee also took note of the fact that "[s]ome representatives of different religious organisations were concerned about an ongoing 'Orthodoxation' of Russia." PACE Committee on Legal Affairs and Human Rights, *Report on Russia's Law on Religion*, Doc. 9393 ¶¶ 5–17 (Mar. 25, 2002), http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc02/edoc9393.htm#P132_25929.

worship in Russia.[219] Yet on even broader terms, the Church has sought to mainstream its vision of culture by condemning alternate models that it opposes. The ROC has made a concerted effort through its public communications to redefine "politically relevant concepts" such as 'spirituality,' 'morality,' 'worldview,' and 'culture,' infusing each term with a definitive Christian Orthodox meaning. In this way, the [C]hurch is able to appropriate words having broad meaning in the public discourse and "fill it with specifically Christian content."[220] Willems stresses that "the significance and effect of this discourse policy" should not be underestimated, since it is evident in a wide range of policy areas where the Church is active, including "military chaplaincy, media policy and demographic developments."[221] Perhaps most notably, "political actors who are pressing for the introduction of the 'Foundations of Orthodox Culture' course . . . often employ terminology used by the ROC in order to justify their decisions."[222]

In a much-publicized incident from Russia's "culture war," Orthodox fundamentalists vandalized a Moscow art exhibition entitled "Caution, Religion!" ('Ostorozhno, religiya'). The fundamentalists justified their actions by claiming that the exhibition was blasphemous and "an insult to the main religion of our country."[223] The alleged vandals were tried and acquitted. However, in a bizarre twist, prosecutors then charged two of the exhibition organizers and an artist for inciting religious hatred.[224] The Moscow Court found the exhibit organizers guilty of insulting the faith, and fined them the equivalent of $3,500 each.[225]

219. USCIRF, ANNUAL REPORT OF THE UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM 58 (May 2007), http://www.uscirf.gov/images/stories/pdf/Annual_Report/2007annualrpt.pdf.

220. This is a very abbreviated summary of the case made by Willems. *See* Joachim Willems, *The Religio-Political Strategies of the Russian Orthodox Church as a "Politics of Discourse"*, 34 RELIGION, ST. & SOC'Y (No. 3) 287, 294 (Sept. 2006).

221. *Id*. at 295.

222. *Id*. The Foundations of Orthodox Culture course is discussed *infra*.

223. Zarakhovich, *supra* note 143; *see also* Willems, *supra* note 220, at 287. The exhibit was sponsored by the Andrei Sakharov Center. The vandals "were supporters of the Rev. Alexander Shargunov, an ultra-right Orthodox priest and founder of the Committee for the Moral Revival of the Fatherland." Guy Chazan, *Russian Church-State Line Blurs*, WALL ST. J., Mar. 29, 2005, at A12.

224. Osipovich, *supra* note 132.

225. Zarakhovich, *supra* note 143; *see also* Willems, *supra* note 220. It is worth noting that according to Elena Bonner, the widow of scientist and Soviet dissident Andrei Sakharov,

More recent events also underscore the growing scope of special protection afforded to the ROC's definition of culture. A Moscow art gallery owner, "specializing in art that tweaks the increasingly powerful Orthodox Church and also the Kremlin," was severely beaten in 2006, yet authorities have failed to charge anyone with the crime.[226] Similarly, in late 2007, the Russian Culture Minister censored a state-sponsored exhibit of Russian contemporary art in Paris. Although the show ultimately opened, "dozens of works were pulled, including one, 'Era of Mercy,' by the Blue Noses group showing two Russian policemen kissing in a birch grove."[227] In addition, the show's curator, Andrei Yerofeyev, is now facing criminal charges "initiated by a vice speaker of Parliament, by pro-Kremlin youth groups and by members of the [C]hurch."[228] Viktor Yerofeyev, a prominent author (and Andrei Yerofeyev's brother), describes the unfolding situation in dire terms:

> They're creating, quickly, a kind of Iran situation, a new-old civilization, an Orthodox civilization . . . . The climate has totally changed. What was allowed the day before yesterday now is dangerous. They don't repress like the Soviets yet, but give them two years, they will find the way.[229]

In contrast, Rev. Chaplin describes the Church's efforts to change policy as simply renegotiating the line between legitimate and illegitimate forms of self-expression:

> [S]ome people believe that the freedom of creative self-expression is absolute, while in fact even the international law states that this freedom is subject to certain restrictions . . . . An absolute majority of the Orthodox Christians believes that this freedom should not cause an abuse of the feelings of believers or defilement of their shrines. We should get into the way of making public policy and decisions considerate of the position of both, the former and the latter.[230]

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the trial signaled that the ROC was "now free to interfere in all aspects of secular life." Chazan, *supra* note 223.

226. Michael Kimmelman, *Putin's Last Realm to Conquer: Russian Culture*, N.Y. TIMES, Dec. 1, 2007, at A1.

227. *Id*. at A9.

228. *Id*.

229. *Id*.

230. *Radical-Liberal*, *supra* note 44.

Yet, Kirill is far more upfront about the scope of the problem stemming from liberal rules governing self-expression. The position he espouses is a mirror image of the Church's hostility to universal human rights. The same argument is simply redirected at an internal debate over the content and nature of Russian culture: "[S]ecularism, the break with spiritual traditions, represents a great threat to the existence of European civilization . . . . [It] not only undermines the foundations of European identity but also provokes conflict with religious groups which do not wish to subject themselves to the general tendency of secularization."[231] Ultimately, the only cure for the problem of secularism and secular culture, according to Kirill, is a return "to the Christian meaning of the European values that underwent secularization"[232] and to religious tradition that contains "a criterion for discerning good from evil. From the perspective of this tradition, the following cannot be accepted as normative: mockery of sacred things, abortion, homosexuality, euthanasia and other actions that are actively advocated today by the concept of human rights."[233] Kirill argues that this return to Christian religious sources is necessary because "societies in which human rights become an instrument for the emancipation of the instinct, *in which the notions of good and evil are confused and driven out by the idea of moral autonomy and pluralism*," are destined to become "inhumane."[234]

Kirill's message has been driven home repeatedly in the ROC's efforts to shape Russian culture across three different fronts. First, according to Kirill, "[L]egislation should be sensitive to moral norms that dominate in society . . . [it] should reflect moral norms shared by the majority of society."[235] Second, "the attitude of the mass media toward the harmonization of human rights with morality is very important."[236] Finally, Krill argues:

231. Metropolitan Kirill, Giving a Soul to Europe, Introductory Speech at the European Conference on Christian Culture (May 3–5, 2006), *in* 96 EUROPAICA BULL., May 11, 2006, http://orthodoxeurope.org/page/14/96.aspx#2.

232. *Id.*

233. Metropolitan Kirill, *Human Rights and Moral Responsibility. Part II*, *in* 98 EUROPAICA BULL., May 25, 2006, http://orthodoxeurope.org/page/14/98.aspx#1.

234. *Id.* (emphasis added).

235. *Id.*

236. *Id.*

> [T]he vacuum of moral education in our society must be filled . . . . The [S]tate, in close cooperation with social institutions . . . including . . . the country's religious communities, such [sic] handle this preparation . . . the state should take care to work out legislation regulating the access of religious organizations to public educational structures, social service, health and the armed forces. In doing so[,] all religious communities in the country should labor in these areas *according to their representation in society.*[237]

The issue of law being informed by the "moral norms" of the ROC is reflected in a number of recent legislative initiatives, including the amended laws on freedom of conscience and NGOs discussed above.[238] On the mass media front, the ROC is actively pursuing efforts to have the State set up a "morality police" for television and other media. At a meeting with President Putin in November, 2007—which some claimed was prompted by the desire to secure Orthodox voter support in the parliamentary elections—Aleksey II appealed for the government to "establish a public council to oversee issues of morality in the mass media" and "assume appropriate regulating functions."[239] This push was followed by ROC claims that the mainstream media "intentionally ignores [the Church's] opinion on acute problems of modern society."[240] Even when the ROC "speaks up," it claims to be ignored because the "informational ghetto of the Soviet times and years of early democracy, has not been universally eliminated."[241]

Without treading into the Orwellian nature of this statement (given Putin's stranglehold on Russian media outlets[242]), it didn't take long for the Church's position to register in the policy realm. Several months after Aleksey's meeting with Putin, Sergey Markov, deputy head of the State Duma Committee for Public Associations

237. *Id.* (emphasis added).

238. Recall the ROC's lobbying effort to amend the 1990 law on Freedom of Conscience, and also Archbishop Nikon's strong endorsement of the ideas underpinning the amendments to Russia's NGO law.

239. *Church Head Calls for Council to Regulate Media*, 46 MOSCOW NEWS, Nov. 22, 2007, *available at* http://mnweekly.rian.ru/national/20071122/55291718.html; *see also Patriarch Alexy II Claims Morality Council to Regulate Mass Media*, PRAVDA, Nov. 19, 2007, http://english.pravda.ru/news/world/19-11-2007/101187-TV_broadcast-0.

240. *The Moscow Patriarchate: Church Is Still Too Often Placed in Informational Ghetto*, INTERFAX, Jan. 16, 2008, http://www.interfax-religion.com/?act=news&div=4160.

241. *Id.*

242. *See, e.g.*, Masha Lipman, *Putin's Puppet Press*, WASH. POST, May 20, 2008, at A13.

and Religious Organizations, decried Russian television as "smash[ing] world records for criminalization and amorality," and concluded that a "Public council on television is necessary."[243] Markov, probably with little irony, also called for establishing "a separate Orthodox channel—not only a decimeter channel, it should be national."[244] In addition, Russia's Association of Orthodox Journalists announced their intention to establish "a public council on morality on Russian federal TV channels" that would "give its judgment on the TV administration's actions."[245] Finally, and perhaps only by coincidence, *Itar-Tass* reported that Russia's Prosecutor-General's Office filed proposals with parliament to "hold internet-providers [sic] responsible for objectionable and extremist materials found on the Internet," including material deemed offensive to public morality or safety.[246]

Clearly, regulation of morality in the media is an example of the ROC actively driving, rather than passively following, formation of government policy. It also represents another policy field upon which the ROC will seek to impose its views. Admittedly, it is premature to ascertain the full scope of the ROC's influence in this matter. Nevertheless, if its past efforts with respect to addressing the "vacuum of moral education" are any indication, the ROC will surely maintain sufficient patience for its efforts to come to fruition.[247]

F. On Education

To date, the Russian public education system is perhaps the most contentious area where the ROC attempts to insinuate its religious and cultural traditions. From the Church's *Basis of the Social Concept*:

243. *Political analyst Markov urges to create moral TV in Russia*, INTERFAX, Mar. 25, 2008, http://www.interfax-religion.com/?act=news&div=4445.

244. *Id.*

245. *Orthodox journalists to establish a public council on morality on Russian TV*, INTERFAX, Jan. 16, 2008, http://www.interfax-religion.com/?act=news&div=4159.

246. *Russian Prosecutors Ask Parliament to Regulate Internet Content*, THE OTHER RUSSIA, Mar. 18, 2008, http://www.theotherrussia.org/2008/03/18/russian-prosecutors-ask-parliament-to-regulate-internet-content/. The Internet has been labeled the "last media refuge" of Russia. *See* Brian Whitmore, *Kremlin Moves to Rein in Last Media Refuge*, RADIO FREE EUROPE RADIO LIBERTY, Mar. 12, 2008, http://rfe.rferl.org/featuresarticle/2008/03/80ab2cbe-2a25-4a63-b74945f9bdebae43.html.

247. Recall the seven years it took the ROC to secure amendments to the 1990 law on freedom of conscience.

> The Church believes it beneficial and necessary to conduct optional classes on Christian faith in secular schools . . . . The [C]hurch authorities should conduct dialogue with the government *aimed to seal in the legislation* . . . the Church has also established Orthodox institutions of general education and *expects that they will be supported by the [S]tate*.[248]

After 1991, Russian authorities opened the doors of public education in search of a new source for *vospitanie*, or upbringing, to replace the discredited communist program of moral education.[249] This outreach exposed schools to varied influences, including programs developed by foreign religious groups (and supported by the Russian Ministry of Education). The ROC rejected this approach, claiming that the openness brought "out a very negative reaction from our [C]hurch and from most of the population."[250] Consequently, the Patriarchate brought its influence to bear on the Ministry and forced the termination of partnerships with these religious groups.[251] According to Glanzer and Petrenko, these changes heralded the "second phase" in Russia's developing education policy, what they label the "Orthodox Revival and Partial Establishment." Yet, despite the ROC's efforts to persuade the government that Orthodoxy merited a special place in the required curriculum—and that failure to do so would leave the State "doomed to self-destruction"[252]—the Russian Ministry of Education resisted developing a special partnership with the ROC and "continued to affirm a pluralistic approach"[253] through the 1990s.

By 2001, the ROC returned to the classrooms, seeking approval for greater Orthodox content within the education system. Patriarch

248. Official Web Server of the Moscow Patriarchate, *The Basis of the Social Concept*, Art. XIV(3), http://www.mospat.ru/index.php?mid=183&lng=1 (last visited Aug. 13, 2008) (emphasis added).

249. Perry L. Glanzer & Konstantin Petrenko, *Religion and Education in Post-Communist Russia: Russia's Evolving Church-State Relations*, 49 J. CHURCH AND ST. 53, 58 (2007). Some of these Western religious groups claimed to have "trained over 50,000 Russian educators to teach a Christian ethics curriculum." *Id.* at 58.

250. *Id.* at 59 (citing PERRY L. GLANZER, THE QUEST FOR RUSSIA'S SOUL: EVANGELICALS AND MORAL EDUCATION IN POST-COMMUNIST RUSSIA 178 (Baylor U. Press 2002).

251. Glanzer & Petrenko, *supra* note 249, at 60 (noting that some groups continued to work on the local level).

252. *Id.* (citing *Basic Social Conception of the Russian Orthodox Church*, 2000, XIV.3, *available at* http://www.mospat.ru/index.php?mid=194 (last visited Aug. 14, 2008)).

253. Glanzer & Petrenko, *supra* note 249, at 60.

Aleksey II declared, "We will try again to persuade the government of the necessity of introducing the history of Orthodox culture in the curriculum of the schools."[254] Within a year, the Russian Ministry of Education had taken steps to introduce a new course into the core curriculum entitled: "Foundations of the Orthodox Culture."[255]

In a survey undertaken in August 2004, the Institute for the Study of Religions in the CIS and Baltic States found that a syllabus for a course on the Foundations of Orthodox Culture asked fifth-graders, *inter alia*, "what the feast of the Nativity of the Mother of God means to [them]" and required students to compose a personal "message to the Mother of God."[256] Further, in some areas, the local Orthodox diocese would organize field trips to religious sites for students of state schools: "Leaders of the pilgrimage groups speak about the basics of Orthodoxy, the sacraments, the Ten Commandments, for 2-4 hours on the way; in short, the pilgrimage includes missionary and catechetical activity."[257]

In part because of a backlash against the course and difficulties surrounding its implementation, the Ministry soon entered a third phase of "strict separationism." This new phase endorsed support for other voluntary classes on religion outside of the required program. But part of the problem in reaching a clear federal standard stemmed from regional control over a percentage of the state school curriculum that was used as a point of entry for unregulated religious instruction. In 2007, disputes over the course continued. An open letter to President Putin from notable members of the Russian Academy of Sciences expressed concern over "the growing clericalisation of the Russian society" and the "active penetration of the [C]hurch into all spheres of public life."[258] The letter's authors further asserted that a mandatory educational program, even if limited only to the foundations of Orthodox *culture*, would be

254. *Id.* at 61. (citing *Patriarch Thinks History of Orthodoxy Should Be Studied in Schools*, NTV, Jan. 26, 2001).

255. Glanzer & Petrenko, *supra* note 249, at 61.

256. Geraldine Fagan, *Patchy Local Provision of Orthodox Culture Classes*, FORUM 18 NEWS SERVICE, Sept. 25, 2007, http://www.forum18.org/Archive.php?article_id=1022.

257. *Id.*

258. *Scientists Alarmed by Clericalisation in Russia, ROC Disagrees*, ITAR-TASS, July 26, 2007. The appeal had ten authors, among them Nobel Prize winners Zhores Alfyorov and Vitaly Ginzburg, and Russian Academy of Sciences members Andrei Vorobyov and Sergei Inge-Vechtomov. *See Russian Academicians Oppose Church Interference In Public Life*, ITAR-TASS, July 22, 2007.

inappropriate in "a multiethnic, multiconfessional country."[259] The ROC's response was swift. Aleksey II stated that the "[atheists'] apprehensions about the Church pushing the country towards a collapse . . . sound strange as a minimum."[260] He further added that the letter was "an echo of the atheistic propaganda of the past."[261] Kirill has since labeled the authors "gentlemen [who] want to see a return to the Soviet Union."[262]

Nevertheless, in the regions where schools taught a religious curriculum, the "Foundations" course "continued expanding, albeit to a smaller degree than previously."[263] In the Voronezh region and the city of Ulyanovsk on the Volga, the "Foundations" course became part of the mandatory curriculum. Likewise, Junior Cadet and Cossack schools in the southern Rostov region "introduced mandatory studies of the Law of the Lord."[264] Other reports have noted that "localities in Russia are increasingly decreeing that to receive a proper public school education, children should be steeped in the ways of the [ROC], including its traditions, liturgy and historic figures."[265] Still, most regions opted for courses incorporating several religions, albeit limited to those defined as "traditional."[266]

The ROC maintains that the "Foundations" courses "are cultural, not religious,"[267] and so may form part of the State's educational program. This stance ties back to Willems' discussion of the ROC's discourse policy, which seeks to redefine "politically relevant concepts" by infusing terms like culture with definitive Christian Orthodox meaning. But beyond this effort, it is worth underscoring that the 1992 Education Law establishes "the secular character of education in [state] institutions at [the] national and

259. Fagan, *supra* note 256.

260. Alexandrova, *supra* note 62.

261. Clifford Levy, *Welcome or Not, Orthodoxy Is Back in Russia's Public Schools*, N.Y. TIMES, Sept. 23, 2007.

262. Spiegel Online International, *supra* note 52.

263. *Russian Human Rights Groups Present Annual Report On Religious Freedom*, WORLD NEWS CONNECTION, Feb. 23, 2008, *available at* Westlaw 2/23/08 WRLDNWSC 22:39:04 [hereinafter *Russian Human Rights Groups*].

264. *Id*. ROC efforts to promote the teaching of its curriculum also continued "in areas such as Kursk and Tambov." Glanzer & Petrenko, *supra* note 249, at 64.

265. Levy, *supra* note 261.

266. *Russian Human Rights Groups*, *supra* note 263.

267. Levy, *supra* note 261.

regional level,"[268] and prohibits activity by religious organizations in those institutions.[269]

Current reform plans in Russia's parliament would abolish the regional mechanism that introduced the "Foundations of Orthodox Culture" curriculum. However, the Education Ministry maintains that any reform will preserve the ability of individual schools to determine curriculum content, "taking into account regional or national particularities, school type, educational requirements and pupils' requests."[270] On this issue, Putin has remarked that the Constitution "says that the Church is separate from the state. You know how I feel, including towards the [ROC]. But if anyone thinks that we should proceed differently, that would require a change to the Constitution. I do not believe that is what we should be doing now."[271]

Some observers have speculated that government ambivalence to the ROC's educational plans stems from the fact that modifying the education system will potentially implicate millions of citizens, whereas the 1997 amendments to the law on freedom of conscience "would not have been felt by most citizens."[272] Ultimately, Glanzer and Petrenko find that the Russian government "shows little consistency in its approach to church-state issues in education." Instead, the State seeks to have it both ways, affirming strict separationism concerning funding but endorsing "historical pluralism when it comes to regulating religion in state or private education."[273] The authors rightly conclude that the ROC remains dissatisfied with this arrangement and "will likely continue to press for managed pluralism or partial establishment, especially in funding."[274]

268. Willems, *supra* note 220, at 288.

269. Fagan, *supra* note 256.

270. *Id*.

271. *Id*. The overt political nature of this comment will not be lost on readers, since on every other issue discussed herein, Putin has comfortably endorsed, even advanced the breakdown of separation of church and state. Moreover, Putin did not say current practices should be scaled back to accord with the Constitution. *See* Levy, *supra* note 261.

272. Fagan, *supra* note 256.

273. Glanzer & Petrenko, *supra* note 249, at 73.

274. *Id*. John Basil speculates that a decision to "settle this issue" on the part of government officials will only come when it is deemed to serve "the interests of the [S]tate." John D. Basil, *Orthodoxy and Public Education in the Russian Federation: The First Fifteen Years*, 49 J. CHURCH & ST. 27, 52 (2007).

According to Aleksey II, the Church had been successful in its negotiations with the State insofar as "[Foundations] of Orthodox Culture" is expected to be "taught in general schools as of 2009 as a [sic] element of the mandatory course called 'The Spiritual and Moral Culture.'"[275] Indeed, as recently as "the summer of 2007 a number of regions, including Ulyanovsk, Voronezh, Bryansk, Kaluga, Smolensk and Tver were planning to introduce the course *into secondary schools* in the forthcoming school year."[276] Moreover at a January 2008 meeting with representatives from the Church, scientific, and government communities, Aleksey reaffirmed the ROC's intent "to do everything possible to make education in the Fatherland really conforming to the interests of the society's development."[277] He insisted that "[t]eaching the [Foundations] of Orthodox culture at schools [remained] as important as ever."[278] Aleksey also expressed the ROC's desire "that serious steps to overcome artificial barriers preventing cooperation" between it and the Russian State would be taken in 2008.[279] He further stated that "casting religion out from public sphere [was] unacceptable."[280]

For the Church, the secondary school curriculum on culture represents one more exploitable crack in what remains of the divide separating church from state. This course, "a compulsory subject during [the] first term for all high school pupils in Russia,"[281] seeks to help "model a culture which is not influenced by the products of mass Western culture but which sets up alternative values and concepts which are orientated towards Russia's historical experience."[282] For the ROC, this mandate falls squarely within its conception that "Orthodoxy is not just a significant element of Russian culture but lies at its very basis."[283] It further enables the

275. Alexandrova, *supra* note 62.

276. John Anderson, *Putin and the Russian Orthodox Church: Asymmetric Symphonia?*, 61 J. INT'L AFFAIRS (No. 1) 185, 197 (2007) (emphasis added).

277. *Patriarch Calls For Teaching Spiritual Culture at Russian Schools*, WORLD NEWS CONNECTION, Jan. 28, 2008, *available at* Westlaw 1/28/08 WRLDNWSC 13:06:26.

278. *Id*.

279. *Id*.

280. Patriarch Aleksy II, *supra* note 179. This, despite separation of religion from the "public sphere" being wholly in accord with the Russian Constitution.

281. Willems, *supra* note 220, at 291.

282. *Id*. at 292 (internal quotes omitted).

283. *Id*. Indeed, Willems points out that according to the ROC's *Basis of the Social Concept*, "promulgated by the Bishops' Council in 2000, the Latin word cultura is

Church to perpetuate a discourse policy that manipulates the plain meaning of "culture." Thus, any lesson plan directed at building Russian culture necessarily must incorporate a component related to Russian Orthodoxy.[284] In other words, the course provides an avenue of religious engagement within the secondary school setting that mirrors the model sought by the ROC on the elementary school level.

It is important to recall, particularly in the context of curriculum "reform," that the ROC's "best practices" and desired changes run contrary to Russia's international law obligations. Even if the ROC or Russian State makes the case that current practices in Russia related to religious liberty and education do not fall "outside the norm of other countries considered to be liberal democracies,"[285] in all likelihood, these practices are indeed *ultra vires* of the Constitution and also would be deemed unjustifiable under the European Convention. This reasoning is strengthened by a recent ECHR decision that rejected Norway's religious instruction program due to its stilted nature favoring a single, yet constitutionally enshrined, state religion. According to the majority decision in *Folgero*, Norway's state education program "KRL" (Christianity, Religion and Philosophy), violated that country's obligations under Article 2 of Protocol No. 1 to the European Convention.[286] The violation arose because the government failed to take "sufficient care that information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner."[287]

etymologically derived from the word cultus" and that it follows, from the Church's perspective, "that any cultivated human being needs a religious education and religious ties, and conversely that without religion no human being can be cultivated." *Id*. at 292–93. In other words, for the Church, culture translates into faith.

284. *Id*. at 292.

285. Glanzer and Petrenko, *supra* note 249, at 73.

286. Russia ratified the *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms* to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the *Convention for the Protection of Human Rights and Fundamental Freedoms* (CETS No.: 009) on May 5, 1998, http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=009&CM=7&DF=3/19/2008&CL=ENG. Article 2 of the Protocol provides that: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions." *Id*.

287. Folgerø & Others v. Norway, Application no. 15472/02, Eur. Ct. H.R.¶ 102 (June 29, 2007).

Remarkably, this happened despite the fact that Norway's Constitution explicitly recognizes a state church. For example, Article 2 stipulates that the "Evangelical-Lutheran religion shall remain the official religion of the State. The inhabitants professing it are bound to bring up their children in the same."[288] Further, under Article 16, "[t]he King ordains all public church services and public worship, all meetings and assemblies dealing with religious matters, and ensures that public teachers of religion follow the norms prescribed for them."[289]

The ECHR's decision is instructive in the context of Russia's legal obligations for a number of reasons. First, it establishes that even where a state constitutionally acknowledges an official religion, in the words of the Court, "democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position."[290] In this regard, the state remains under an obligation to "take care that information or knowledge included in [educational curricula] is conveyed in an objective, critical and pluralistic manner. *The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions.*"[291]

Second, in the face of Russia's *de jure* secularism, the case exposes the true scope of the damage caused to separation of church and state and to principles of religious equality and nondiscrimination. In other words, it is one thing for Norway—a country with an official state religion—to seek to inculcate the religious doctrines of that faith above all others. It is altogether another for Russia—an officially secular state—to seek to do the same.

It is also worth noting that the UN Human Rights Committee (HRC) addressed the same issue through its own complaint mechanism almost three years earlier. The HRC found that Norway's KRL program could not "be said to meet the requirement of being delivered in a neutral and objective way, unless the system

288. CONSTITUTION OF THE KINGDOM OF NORWAY art. 2, *available at* http://www.constitution.org/cons/norway/dok-bn.html.

289. *Id*. art. 16.

290. *Folgerø*, Application no. 15472/02 at ¶ 84(f).

291. *Id*. at ¶ 84(h) (emphasis added).

of exemption in fact leads to a situation where the teaching provided to those children and families opting for such exemption will be neutral and objective."[292] It then went on to find that the exemption scheme was inadequate.[293] As a consequence, the HRC concluded that the Norwegian law constituted a violation of Article 18(4) of the ICCPR,[294] relating to the State's obligation to "have respect for the liberty of parents . . . to ensure the religious and moral education of their children in conformity with their own convictions."[295] Applying the HRC's findings to current developments in Russia leads one to the reasonable conclusion that a similar violation of ICCPR obligations could be found in the context of the "Foundations of Orthodox Culture" course. This conclusion is only reinforced when Russia's official secular status is factored into the equation.

G. Explaining It All Away

1. The ROC's Basis of the Social Concept

In the face of all the events, trends, and factors discussed above, the ROC might simply assert that everything it has done has been in accordance with the Church's vision, and without soiling its hands in the temporal muck of state politics. According to the *Basis of the Social Concept*:

> [T]he Church can cooperate with the [S]tate in affairs which benefit the Church herself, as well as the individual and society. For the Church this co-operation should be part of her salvific mission, which embraces comprehensively the concern for man. The Church is called to take part in building human life in all spheres where it is possible and, in doing so, to join efforts with representatives of the secular authority.[296]

292. Human Rights Committee, *Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights*, Communication No. 1155/2003, ¶ 14.3, U.N. Doc. CCPR/C/82/D/1155/2003 (Nov. 23, 2004).

293. The Committee concluded that requiring parents to "acquaint themselves with [a] subject . . . clearly of a religious nature" in order to secure an exemption was a "considerable burden." *Id.*

294. *Id.* at ¶ 14.7.

295. ICCPR, *supra* note 100, art. 18.4.

296. Official Web Server of the Moscow Patriarchate, *supra* note 248, art. III.8.

This important document reflects the ROC's official position on relations with state and secular society and lists sixteen specific areas (from a non-exhaustive list)[297] wherein the church is permitted to cooperate with government, including:

> (b) concern for the preservation of morality in society;
>
> (c) spiritual, cultural, moral and patriotic education and formation;
> . . .
>
> (f) dialogue with governmental bodies of all branches and levels on issues important for the Church and society, including the development of appropriate laws, by-laws, instructions and decisions . . . .[298]

Perhaps not surprisingly, this article focused most of its discussion on these areas. In turn, ROC leaders readily assert that their vision of partnership—because it conveniently sidesteps the designation of "state church"—frees the ROC from any possible culpability in diminishing the constitutional structures of the State, particularly as these structures relate to secularism, equality, and non-discrimination. As Aleksey II asserted, "We don't want political and state influence. We want spiritual influence. We are neither for the left nor the right. We are for eternal things. The [C]hurch must be separated from the state—that is my firm conviction."[299] And in a similarly framed rejoinder to United States government criticism, Metropolitan Kirill insisted that:

> [O]ur Church is in no way striving to receive the status of a state Church . . . . On the other hand, our study of past experience has convinced us of the necessity of constructing a partnership with the [S]tate, based on mutual beneficial cooperation in the interests of society as a whole. Such a partnership would presuppose the conclusion of agreements which would create the proper legal foundation for the Church's social ministry.[300]

In reaction to the academics' open letter to Putin discussed above, Metropolitan Kirill sounded the same line, albeit with greater incredulity: "We have not healed the wounds inflicted by terror and

297. "Church-state co-operation is also possible in some other areas if it contributes to the fulfilment of the tasks enumerated." *Id*.

298. *Id*. at c, d, f.

299. Pope, *supra* note 51.

300. Metropolitan Kirill, *supra* note 176.

genocide against the [ROC], and we have just begun to rise from the knees. So what clericalization of society can be in question?!"[301]

Putting aside questions regarding the legitimacy of the ROC's remarkably open-ended ability to "partner" with the government, its actions still appear—in light of the evidence above—to strain any credible definition of church-state separation. First, the ROC overreached by vigorously *lobbying for* policy concerns rather than merely "partnering." Second, the ROC has outright violated—if not in letter then at least in spirit—its own *Basis of the Social Concept* provision prohibiting "clergy and canonical church structures" from supporting or cooperating with the State, *inter alia*, in "political struggle, election agitation, [and] campaigns in support of particular political parties and public and political leaders."[302]

On this latter point, this article has already noted that the Church has asserted very public positions amounting to virtual campaign endorsements in various elections. This practice has only grown bolder with the recent election of Dmitry Medvedev. When questioned about the Church's effusive welcome of Putin's decision to name Medvedev as his successor and its call for Putin to continue on as prime minister, Metropolitan Kirill said, "We didn't react positively because Vladimir Putin supports him, but because Medvedev is an experienced politician. And the idea of Putin becoming the head of the government does not contradict our [C]onstitution."[303]

Strangely, what's missing from Kirill's statement is any denial of *support* proffered to a specific candidate or political party. Moreover, in the face of ROC practices and actions that blatantly contradict Russia's Constitution, Kirill's invocation of that document here as an attempt to legitimate the ROC's endorsement comes off at best as cherry-picking and at worst as pure hypocrisy.

What emerges from all of this is a situation whereby the ROC refutes its intent or desire to be sanctioned as an official state church, but all the while seeks to expand "unofficially" its influence on virtually all aspects of Russian society through "cooperation" with the government. As McGann points out, it would appear that

301. *Church Invites Academicians to Serious Dialogue*, ITAR-TASS, Aug. 13, 2007.

302. Official Web Server of the Moscow Patriarchate, *supra* note 248, at art. III.8. It should also be pointed out that according to this policy document, the list of activities where church-state cooperation is permissible is significantly longer than the list of prohibitions.

303. Spiegel Online International, *supra* note 52.

Aleksey II has consciously adopted "this highly insincere strategy of shifting back and forth between constitutional and church principles whenever he deems it convenient."[304] Remarkably, the ROC expects that by forgoing the formal label of state church it can continue to unduly influence government policy without fear of government interference in its own affairs and without any accountability for its own actions. In this way, fears expressed by some that the ROC "runs the risk of (self-) instrumentalisation for political purposes" by "[s]tanding close to the [S]tate and assuming responsibility for it" are in fact ill-placed.[305] As Vitaly Ginzburg, one of the signers of the open letter to Putin has succinctly observed, the ROC "wants to penetrate everywhere and influence everything, but it does not want to bear any responsibility for it."[306] By continually insisting that it is opposed to church-state fusion and does not care to become the official state church of Russia, the ROC is able to exert as much influence as the regime will willingly accept—without any liability for the ensuing policy or constitutional consequences. Ironically, a recent article evaluating the unintended consequences of state religion tends to confirm that the ROC truly does retain the best of both worlds by forgoing a push for official recognition. According to the authors of this survey, "any positive benefits to the [C]hurch with direct support from the [S]tate are outweighed by indirect effects that undermine the [C]hurch's autonomy and its authority with the general populace."[307]

2. The state needs the church

To the extent that it too has abetted the current relationship, the State is equally culpable of obviating separation of church and state, but for different motives. As noted, Yeltsin was quick to recognize ROC support as "a highly valuable political asset in his bid for the presidency," and did not hesitate to capitalize on, among other things, "highly publicized participation in church activities."[308] Indeed, as early as the "first half of the 1990s, the Church inspired

304. McGann, *supra* note 26, at 24.

305. Willems, *supra* note 220, at 296.

306. Osipovich, *supra* note 132.

307. Charles M. North and Carl R. Gwin, *Religious Freedom and the Unintended Consequences of State Religion*, 71 S. ECON. J. 103, 104 (2004).

308. McGann, *supra* note 26, at 16.

greater trust among the Russian population than most other social and political institutions."[309] In surveys taken over the past several years, the Church has continued to rank as the most trusted organization in Russia, alongside the army.[310] The ROC places ahead of "the central and local governments, the Duma, the police and the judiciary system, the media, and the banks."[311] As part of this support, Aleksey II "has become one of the country's most influential public figures."[312] Thus, the "[C]hurch's support [is] a powerful source of legitimacy,"[313] given its deep roots in Russian history and the high degree of credibility most Russians ascribe to it. None of this was lost during Putin's tenure, which has been characterized as harnessing "[n]ationalism, based on the Orthodox faith . . . as [its] major ideological resource."[314] In a November 2007 address to ROC clergy, Putin remarked:

> Russian Orthodoxy has a particular role in our country's history, in the formation of our statehood, culture, morals and spirituality. . . . Today, we greatly value the [ROC's] efforts to return to our country's life the ideals and values that served as our spiritual references for so many centuries. . . .
>
> . . . The [S]tate and the Church have ample scope for working together to strengthen morality and educate the young generation, and of course, to preserve our country's spiritual and cultural heritage.[315]

Similarly, Putin, even more than Yeltsin, comfortably wrapped himself in the cloak of ROC support as a means of enlarging his political leverage. During the run-up to the 2007 elections, Putin held a meeting with Patriarch Aleksey II that some analysts

309. GOVERNMENT PRINTING OFFICE (GPO) FOR THE LIBRARY OF CONGRESS, RUSSIA: A COUNTRY STUDY (Glenn E. Curtis ed., 1996), *available at* http://countrystudies.us/russia/38.htm.

310. McGann, *supra* note 26, at 22; s*ee also* Lee Trepanier, *Nationalism and Religion in Russian Civil Society: An Inquiry into the 1997 Law "On Freedom of Conscience," in* CIVIL SOCIETY AND THE SEARCH FOR JUSTICE IN RUSSIA 57, 64–73, 67 (Christopher Marsh & Nikolas K. Gvosdev eds., 2002).

311. Gaskova, *supra* note 36, at 119.

312. MEMBERS OF THE SPEAKER'S ADVISORY GROUP ON RUSSIA, *supra* note 61.

313. Shterin & Richardson, *supra* note 31, at 334.

314. Zarakhovich, *supra* note 143.

315. President Vladimir Putin, Speech at Meeting with Russian Orthodox Clergy to Mark the Ninetieth Anniversary of the Patriarchate's Restoration (Nov. 20, 2007), *in* JOHNSON'S RUSSIA LIST, 2007-#240, Nov. 20, 2007.

concluded "was part of an effort by the Kremlin to encourage religious Russians to vote."[316]

Some observers have argued that while Orthodoxy served to legitimize the Putin regime, its "support [was] reserved and skeptical. The relationship between religion and politics is, therefore, complex, as the [C]hurch plays a dual role of legitimator and critic."[317] Objectively, one has to look very hard to find any compelling examples of genuine government criticism emanating from the Patriarchate. Even if one finds the ROC has condemned violence and terrorism in generalities, it has shown no public inclination "to pose difficult questions" about government policies that may be fueling separatist activities and crimes motivated by xenophobia.[318] As Lawrence Uzzell has concluded, "As long as instinctive servility remains part of [its] genetic code," the ROC "can usually be counted on to avoid speaking up on issues where their moral heritage contradicts the [S]tate's current policies."[319] And still, even if the ROC's support is taken as "reserved and skeptical," it nevertheless remains suspect given its deleterious impact on the Constitution and the condition of genuine religious freedom in Russia.

V. POSTSCRIPT 2008: FOUR MORE YEARS!

In keeping with unconstitutional practice—and the ROC's tendency to read out key sections of its own *Basis of the Social Concept*—the 2008 presidential elections signaled an unprecedented level of church intervention. The day after Putin backed Medvedev as his preferred candidate, Aleksey II told a gaggle of reporters, "If Vladimir Vladimirovich puts him forward, this is a carefully reasoned decision, and we welcome it."[320] Aleksey also called Putin's plan a "great blessing for Russia"[321] and observed that "[f]or the nation, of

316. *Putin, Medvedev Celebrate Russian Orthodox Easter Together Ahead of Kremlin Handover*, ASSOCIATED PRESS, Apr. 27, 2008, *available at* JOHNSON'S RUSSIA LIST, 2008-#828, Apr. 28 2008 [hereinafter *Orthodox Easter*].

317. Hesli, *supra* note 90, at 43.

318. James W. Warhola, *Religion and Politics Under the Putin Administration: Accommodation and Confrontation within "Managed Pluralism,"* 49 J. CHURCH AND STATE 75, 77–78 (2007).

319. Lawrence A. Uzzell, *Autocracy or Theocracy?*, MOSCOW TIMES, July 29, 2004.

320. Osipovich, *supra* note 132.

321. Higgins, *supra* note 23.

course, the most important event will be the election of the new president and our people should make the correct choice[,] and it is not words and promises they should react to but the specific achievements of each candidate."[322] At Christmas 2007, Aleksey had the chance to offer his greetings to Medvedev in a service at the Cathedral of Christ the Savior that was prominently featured on state television.[323] At that time, the patriarch applauded Medvedev's support of the Church, including his backing of legislative amendments that would mandate state recognition of diplomas conferred by ROC seminaries and serve to qualify clergy to teach religion in state universities.[324] "Before we used to hit a brick wall when we raised this question."[325] The amendments passed their second reading in the State Duma in February 2008.[326]

Arguably, the ROC will assert that these are "general" comments designed only to encourage a citizen's civic duty; but really, at this point, the intended message is clear: follow the ROC's endorsement and vote for Putin's successor.

Not to be outdone, in the midst of the 2007 parliamentary election season, Putin added:

> Orthodoxy has always had a special role in shaping our statehood, our culture, our morals . . .
>
> . . . .
>
> I am sure the Orthodox Christians like other citizens will show strong activity [at the polls].
>
> . . . .

322. *Russians Should Judge Candidates by "Achievements,"* RUSSIA & CIS GENERAL NEWSWIRE, Dec. 26, 2007.

323. Osipovich, *supra* note 132. Aleksey's influence on Russia's "estimated 100 million Orthodox worshippers is immense." Blomfield, *supra* note 133.

324. Victor Yasmann, *In Focus: Putin's Choice: A Profile of Dmitry Medvedev*, RADIO FREE EUROPE/RADIO LIBERTY, Mar. 10, 2008, *available at* http://www.cdi.org/russia/johnson/2008-53-33.cfm.

325. *Patriarch Alexsy II and Other Leaders of the Russian Orthodox Church Have Voiced Their Support for President Vladimir Putin's Anointing of First Deputy Prime Minister Dmitry Medvedev as His Successor*, 125 THE CHRISTIAN CENTURY 21, 21 (2008).

326. *Analysis: Russia—Outlook for Relations Between Medvedev, Orthodox Church*, US OPEN SOURCE CENTER, May 7, 2008.

> We highly appreciate the [C]hurch's striving to revive in Russian society ideals and values which have for ages served us as moral guidelines . . . .[327]

On the day of presidential elections in Russia, members of Election Commission No. 2614 carefully placed a ballot box in their van and drove to the working residence of the patriarch. Amidst a throng of radio and print media, and with TV cameras rolling, the stage was set: Aleksey walked into the room, sat down at the head of a wide table, and cast his ballot into the hand-delivered box. Following this very stirring and orchestrated display of state apparatchiks[328] coming before the Church, Aleksey encouraged all Russians "to thank Vladimir Vladimirovich Putin, who for eight years served selflessly."[329] He further expressed his wish that the next president "continue the course carried out" by President Putin.[330] Shortly after Medvedev's predictable victory, Aleksey added, "It is gratifying to know that during the years of your previous work in government posts. [sic] You always strove to make a significant contribution to the development of fruitful cooperation with the Russian Orthodox Church and kept watch over national interests."[331]

It is worth noting that Dmitry Medvedev, like Putin, is a practicing member of the ROC. For his part, Medvedev has said the State "must create conditions to satisfy a need of a person to go to church," and that "the Church assumes the function of improving the society."[332] Not unlike Yeltsin's casual if contrived stroll in the

327. Oleg Shchedrov, *Putin Promises Support to Russian Orthodox Church*, REUTERS, Nov. 19, 2007, *available at* http://www.reuters.com/article/worldNews/idUSL1960771200711119.

328. This is a colloquial Russian term that denotes an unquestioningly loyal functionary or official within a large organization, traditionally the Communist party. *See* AMERICAN HERITAGE COLLEGE DICTIONARY 68 (4th ed. 2004); NEW OXFORD AMERICAN DICTIONARY 73 (2d ed. 2005).

329. Press Release, Press Service of the Moscow Patriarchate, Predstoyatel Russkoy Tserkvi Prinyal Uchastiye v Viborach Prezidenta Rossiiskoy Federatsii [Head of Russian Church took part in the election of the President of the Russian Federation] (Mar. 2, 2008) (available at http://209.85.135.104/translate_c?hl=en&langpair=ru|en&u=http://www.patriarhia.ru/db/text/372399.html).

330. Sophia Kishkovsky, *Russia's Religious Leaders Congratulate Putin Heir Medvedev*, ECUMENICAL NEWS INTERNATIONAL, Mar. 6, 2008, http://www.eni.ch/featured/article.php?id=1710.

331. *Id.*

332. *Scientists Alarmed By Clericalisation in Russia, ROC Disagrees*, *supra* note 258.

park with Aleksey prior to Election Day, Medvedev also took it upon himself to visit with Aleksey II ten days before the presidential elections, on the ostensible occasion of the patriarch's birthday. With wife Svetlana in tow, Medvedev wished the patriarch "a happy birthday, a happy Fatherland Defender Day and a happy name day, which is upcoming . . . and all the best, energy and good health."[333] Press accounts also reported that Medvedev offered the patriarch presents that included a bunch of white roses.[334]

Of note, Svetlana Medvedev "now chairs the council of trustees of the faith-based program Spiritual and Moral Culture of Russia's Younger Generation."[335] This program was launched with the blessing of Patriarch Aleksey and is intended to promote "the establishment of Orthodox Church orphanages, educational and research expeditions for young people and pilgrimages to Russian patriotic and religious shrines."[336] The project is also "part of the Orthodox Church's drive to reintroduce religion into Russia's schools."[337] Some observers have already speculated that Svetlana Medvedev "may use her position to increase the influence of the Orthodox Church in public policy."[338] It is also worth recalling that in March 2007 a governmental commission chaired by Medvedev approved a policy that will enable the ROC to recover Church property, land, and assets confiscated during the Communist era.[339]

With the transfer of power proceeding as planned, it appears that Russia's Constitution has four more years of neglect and abuse ahead. At an Orthodox Easter ceremony overseen by Aleksey II and attended by Putin and his handpicked successor, Medvedev

333. *Medvedev, Wife Visit Head of Russian Orthodox Church*, INTERFAX, Feb. 23, 2008, http://www.interfax-religion.com/?act=news&div=4324.

334. *Id*. Fatherland Defender Day is a Russian public holiday observed on February 23 that celebrates the country's armed forces. Aleksey added, "I would also like to wish you a happy Fatherland Defender Day, it is everyone's holiday." *Id*.

335. Martin Walker, *Russia's Modern Czar*, UPI, Dec. 12, 2007.

336. *Id*. Svetlana Medvedev was awarded "a medal from the Orthodox Church for her social work." *See* Kevin O'Flynn & Svetlana Osadchuk, *Meet the First Lady in Waiting*, MOSCOW TIMES, Dec. 12, 2007.

337. Nick Holdsworth & Will Stewart, *How the Steely Svetlana Turned an Academic into a President*, SYDNEY MORNING HERALD, Mar. 3, 2008, *available at* http://www.smh.com.au/news/world/how-steely-svetlana-powered-up-her-mild-man/2008/03/02/1204402273527.html.

338. *The List: Seven Kremlin Powerbrokers to Watch*, FOREIGN POLICY, Mar. 2008, http://www.foreignpolicy.com/story/cms.php?story_id=4229.

339. Yasmann, *supra* note 324.

commented that the ROC's role in society "opens new possibilities for the cooperation of the [S]tate and the Church in resolving current questions of culture and the moral health of the nation, in bringing up the young generation."[340] Less than two weeks later, immediately following Medvedev's inauguration ceremony, the ROC held a private prayer service for the new president in the Annunciation Cathedral, formerly the private chapel of the Russian czars.[341] Patriarch Aleksey II proclaimed: "The Church is ready for further cooperation with the [S]tate because we have only one homeland, one history and one future," and affirmed the "good tradition to invoke God's blessing" after the inauguration.[342] In response, Medvedev promised, "the special, trustful relations with the [ROC] will be kept and further developed to the benefit of the Fatherland."[343] Also in his first afternoon as president, Medvedev submitted Putin's nomination to serve as Russia's next—and newly empowered—prime minister.[344]

In the face of these opening gestures of continuity, there is no indication that Medvedev will seek to restore the president's duty under Article 80 to serve as the guarantor of the Constitution and "of the rights of man and citizen."[345] Yet, Medvedev likewise has demonstrated no inclination that he will have the gumption to seek a constitutional amendment officially endorsing the reality of the church-state situation as it stands.[346]

340. *Orthodox Easter*, *supra* note 316.

341. Andrei Zolotov Jr., *Inauguration Augurs: The Inauguration Ceremony Took Place in a Tsarist Atmosphere*, RUSSIA PROFILE, May 8, 2008, *available at* JOHNSON'S RUSSIA LIST, 2008-#91, May 9, 2008.

342. President Dmitry Medvedev said "special relations" with the ROC would be preserved and developed. ITAR-TASS, May 7, 2008, *available at* JOHNSON'S RUSSIA LIST, 2008-#90, May 8, 2008.

343. *Medvedev: Special Relations with Orthodox Church Will Be Maintained*, INTERFAX, May 7, 2008, http://www.interfax-religion.com/?act=news&div=4650.

344. Alexander Osipovich, *President Medvedev Stresses the Law*, MOSCOW TIMES, May 8, 2008, *available at* JOHNSON'S RUSSIA LIST, 2008-#90, May 8, 2008.

345. Konstitutsiia Rossiiskoi Federatsii [Constitution] art. 80 (Russ.).

346. According to recent poll data, 25% of respondents supported granting the ROC status as a state religion versus 29% in 2001–2002. Those favoring separation of church and state also decreased in 2008 to 45% from 53% in 2001 and 50% in 2002. Perhaps not surprisingly, the survey also found that Russians increasingly had doubts about how to resolve this issue—jumping from 18% in 2001 to 29% today. *Over A Quarter Of Russians Confess to Not Being Believers – Poll, More and More Russians Have Doubts About How the Issue Should Be Resolved*, INTERFAX, Apr. 24, 2008, *available at* JOHNSON'S RUSSIA LIST, 2008-#81, Apr. 25, 2008.

As for the ROC, it appears that it will put the brakes on construction of new churches and reprioritize to focus instead on "help[ing] our people understand how important it is to adhere to Christian values."[347] According to Kirill, "Whether we succeed also depends on whether we can rid ourselves of outside influences."[348] And thus, the devaluation of constitutional currency, the breakdown of separation of church and state, the hampering of religious freedom, and continued xenophobia in Russia all remain on the agenda. Yes, there may be challenges along the road, such as the recent flare up over military draft exemptions, but—as this article has demonstrated—the ROC is patient and committed to a long-range vision of Russian society and politics. At present, all signs point to the fact that the Church will have a willing partner in the Medvedev government for advancing its objectives.[349] The longer this relationship of "symbiosis" persists, the more difficult it will be to break off, and the further Russia will veer off course from its original constitutional vision of freedom after communism.

347. Spiegel Online International, *supra* note 52.

348. *Id.*

349. Indeed, even financial analysts are reaching similar conclusions. Chris Weafer, chief strategist at Russia's URALSIB Bank, has concluded Medvedev will "emphasize morality of life style" and "encourage the role of the [C]hurch." *See* Henry Meyer and Sebastian Alison, *Dmitry Medvedev to Confront West With 'Measured' Tone*, BLOOMBERG, Feb. 29, 2008, *available at* JOHNSON'S RUSSIA LIST, 2008-#44, Feb. 29, 2008.