



SOUL WARS: THE PROBLEM OF PROSELYTISM IN RUSSIA

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INTRODUCTION
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OF PROSELYTISM IN RUSSIA

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INTRODUCTION

SOUL WARS: THE PROBLEM AND PROMISE OF PROSELYTISM IN RUSSIA

by

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It is our obligation to battle for people's souls by all legal means available, rather than allowing them to perish. [We must] react to the continuing intensive proselytizing activity by some Catholic circles and various Protestant groups . . . [and] to the growing activity of sects, including those of a totalitarian nature . . . [for] it is largely our own brothers and sisters who fall victim to these sects.¹

— Patriarch Aleksii II, December 26, 1996

A new war for souls has broken out in Russia—a war to reclaim the traditional spiritual and moral soul of the Russian people, and a war to retain adherence and adherents to the Russian Orthodox Church. In part, this is a theological war—as the Moscow Patriarchate of the Russian Orthodox Church has sought to reestablish itself as the spiritual leader of the Russian people and as rival religious communities from Russia and abroad have begun actively to defame and demonize each other. The ecumenical spirit of the previous decades is giving way to sharp new forms of relig-

* Jonas Robitscher Professor of Law and Ethics; Director of Law and Religion Program, Emory University. I wish to express my gratitude to Harold J. Berman, T. Jeremy Gunn, and Joel Nichols for their criticisms of an earlier draft of this Article, and to Matthew C. Miller of the Emory University School of Law for his able assistance during the editing process of this Article.

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¹ Aleksii II, Patriarch of Moscow and All Russia, Address of the Patriarch to the Councils of the Moscow Parishes at the Episcopal Gathering, December 12, 1996, in 6 TSERKOVNO-OBSHESTVENNYI VESTNIK, Dec. 26, 1996, at 7.

ious balkanization and rivalry in Russia. In part, this is a legal war—as local and national legislatures have passed laws severely restricting the rights of many religious persons and peoples of Russia. Beneath its shiny constitutional veneer of religious freedom and equality for all, Russia has developed a legal culture of blatant religious favoritism for some and blatant religious oppression of others.

This symposium provides a close analysis of these new soul wars. Firuz Kazemzadeh and Harold Berman place the current conflicts in long historical context—drawing rather different lessons from the centuries-long symbiosis of church and state, and of religion and culture, in Russian history.² Cole Durham, Jeremy Gunn, Lauren Homer, Johan van der Vyver, and Lawrence Uzzell place the current conflicts in more immediate context—providing first-hand accounts of the machinations surrounding the passage and execution of both provincial and national laws on religion in the past five years. They also expose the many ambiguities and anomalies in these recent laws and the calculated disregard of their drafters for basic constitutional and human rights values.³ Mark Elliott and Anita Deyneka recount the plight of Protestant and other foreign missionaries under these shifting laws.⁴ Donna Arzt details the legal treatment of the burgeoning population of Russian Muslims.⁵ Natan

² Harold J. Berman, *Freedom of Religion in Russia: An Amicus Brief for the Defendant*, 12 EMORY INT'L L. REV. 313 (1998); Firuz Kazemzadeh, *Reflections on Church and State in Russian History*, 12 EMORY INT'L L. REV. 341 (1998).

³ W. Cole Durham & Lauren B. Homer, *Russia's 1997 Law on Freedom of Conscience and Religious Associations: An Analytical Appraisal*, 12 EMORY INT'L L. REV. 101 (1998); T. Jeremy Gunn, *Caesar's Sword: The 1997 Law of the Russian Federation on the Freedom of Conscience and Religious Associations*, 12 EMORY INT'L L. REV. 43 (1998); Lauren B. Homer & Lawrence A. Uzzell, *Federal and Provincial Religious Freedom Laws in Russia: A Struggle For and Against Federalism and the Rule of Law*, 12 EMORY INT'L L. REV. 247 (1998).

⁴ Mark Elliott & Anita Deyneka, *Protestant Missionaries in the Former Soviet Union*, 12 EMORY INT'L L. REV. 361 (1998).

⁵ Donna E. Arzt, *Historical Heritage or Ethno-National Threat? Proselytizing and the Muslim Umma of Russia*, 12 EMORY INT'L L. REV. 413 (1998).

Lerner's overview of international human rights norms on proselytism and change of religion and Joel Nichols' overview of Christian theologies of mission provide comparative criteria for assessing the new laws of the Russian state and the traditional missiology of the Russian Orthodox Church.⁶ The Appendix includes several of the key legal texts under dispute, kindly furnished in English translation by Keston Institute, Oxford.

This Introduction provides a brief overview of the main themes that emerge from these articles. Part I summarizes the remarkable transformation of Russia in the past decade—from a 1990 regime that guaranteed religious liberty for all to a 1998 regime that grants full religious rights and privileges only to the Russian Orthodox Church. Part II explores some of the “ontological differences” between Russia Orthodoxy and Western Christianity that lie at the heart both of this new war for souls and of any attempted assuagement of it.

I. FROM GLASNOST TO SOUL WARS

A. *The Golden Age of Religious Liberty*

Less than a decade ago, Russia embraced religious liberty for all. President Mikhail Gorbachev's revolutionary ideals of *glasnost* and *perestroika* broke the harsh establishment of Marxist-Leninist atheism and awakened the traditional faiths of Russia. The late 1980s saw the revival not only of Russian Orthodoxy, but also of an array of traditional Adventist, Armenian Apostolic, Baptist, Buddhist, Georgian Orthodox, Greek (Ukrainian) Catholic, Jewish, Lutheran,

⁶ Natan Lerner, *Proselytism, Change of Religion, and International Human Rights*, 12 EMORY INT'L L. REV. 477 (1998); Joel A. Nichols, *Mission, Evangelism, and Proselytism in Christianity: Mainline Conceptions as Reflected in Church Documents*, 12 EMORY INT'L L. REV. 563 (1998).

Muslim, Roman Catholic, Ukrainian Autocephalous Orthodox, and other groups.⁷ Many of these religious groups had been driven underground by Communist purges and reprisals and kept alive through countless sacrifices and martyrdoms of four generations of the faithful. Gorbachev established an ambitious campaign of restitution for those religious groups, particularly the Orthodox, that had suffered massive losses of clergy, property, literature, and art since the 1917 Bolshevik Revolution. Foreign religious groups—particularly Protestants and Catholics from Europe and North America, as well as Shi'ite and Sunni Muslims from Turkey and the Middle East—began to receive visas to enter Russia, to reconvene with their co-religionists, and to spread their faiths. Russian Jews, Christians, and Muslims, in turn, were granted visas to travel to holy sites in Jerusalem, Rome, Mecca, and elsewhere.⁸

These favorable policies toward religion were soon translated into strong legal terms. On October 1, 1990, Gorbachev signed a comprehensive new law "On Freedom of Conscience and On Religious Organizations" for the Union of Soviet Socialist Republics (USSR).⁹ On October 25, 1990, the Russian Soviet Federative Socialist Republic (RSFSR) passed its own law on "Freedom of Worship," which repeated and strengthened many of the provisions of the USSR law, and survived the breakup of the USSR in De-

⁷ See IGOR TROYANOVSKY, *RELIGION IN THE SOVIET REPUBLICS: A GUIDE TO CHRISTIANITY, JUDAISM, ISLAM, BUDDHISM, AND OTHER RELIGIONS* (1991), with demographic updates in Aleksandr Shchipkov, *Inter-religious relations in Russia after 1917 in the light of religious statistics*, in *SOUL WARS IN RUSSIA* (Michael Bourdeaux & John Witte, Jr. eds., forthcoming). Shchipkov reports that just before the 1917 Revolution, the Russian Empire was 65% Orthodox, 10% Old (Orthodox) Believers, 8% Catholic, 6% Muslim, 4.5% Protestant, and 4% Jewish. Shchipkov, *supra*, at 7. Just after the 1990 law was passed, the USSR was 22% Orthodox, 0.8% Old Believers, 5.5% Catholic, 3% Protestant, 18.5% Muslim, and 0.2% Jewish. *Id.*

⁸ See Elliott & Deyneka, *supra* note 4; Arzt, *supra* note 5.

⁹ Translated in TROYANOVSKY, *supra* note 7, at 23 ["1990 USSR Law"] and critically analyzed in Berman, *supra* note 2.

ember 1991.¹⁰ Both the USSR and RSFSR laws set forth sweeping guarantees of liberty of conscience and freedom of exercise for all citizens. Both laws included strong prohibitions against religious discrimination, stigmatization, abuse, and coercion.¹¹ The RSFSR law insisted that "freedom of worship is an inalienable right of the citizens of the RSFSR, guaranteed by the Russian constitution and international obligations of the RSRSR" and includes "the right to select and hold religious beliefs and to freely change them."¹²

The 1990 laws guaranteed the religious liberty not only of individuals but also of properly registered groups.¹³ "All religions and denominations shall be equal before the law," reads the USSR law. "The institution of any form of privileges or restrictions for one religion or denomination in comparison to others shall be prohibited."¹⁴ Both 1990 laws insisted that state and religious organizations remain as separate as possible. Religious groups were not to finance, staff, or interfere in state elections, secular public education, or other political affairs. The state, in turn, was not to finance, tax, control, or interfere in the worship, order, festivals, discipline, education, or charity of religious groups. The RSFSR law included within the "inalienable right to freedom of worship" the right to "establish and maintain international communication and direct contacts" with co-

¹⁰ Translated in TROYANOVSKY, *supra* note 7, at 31 ["1990 RSFSR Law"] and analyzed critically, along with pending amendments, in W. Cole Durham 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 (1994) ["1994 De Burght Report"].

¹¹ 1990 USSR Law, *supra* note 9, arts. 1-4; 1990 RSFSR Law, *supra* note 10, arts. 1-7, 17, 22, 25, 29.

¹² 1990 RSFSR Law, *supra* note 10, Preamble, and elaborated in Articles 3-5, 13, 16.

¹³ For criticisms of some of the registration provisions that persisted, see Harold J. Berman et al., *Draft USSR Law on Freedom of Conscience, With Commentary*, 3 HARV. HUM. RTS. J. 137 (1990).

¹⁴ 1990 USSR Law, *supra* note 9, Art. 5; see also parallels in 1990 RSFSR Law, *supra* note 10, Arts. 8-10, 16-19, 23-25.

religionists outside Russia.¹⁵ It also included the "right to promotion of a faith," defined as the right to "dissemination of one's beliefs in society directly or via the mass media, missionary work, acts of compassion and charity, religious instruction and education. . . ."¹⁶

These statutory guarantees of religious liberty were confirmed by the Russian Constitution of 1993.¹⁷ Article 14 of the Constitution provides: "1. The Russian Federation shall be a secular state. No religion may be instituted as [a] state-sponsored or mandatory religion. 2. Religious associations shall be separated from the state, and shall be equal before the law." Article 19 states that "[a]ll people shall be equal before the law and in the court of law" and further that "[t]he state shall guarantee the equality of rights and liberties regardless of . . . [a person's] attitude to religion [or] convictions" Article 28 provides: "Everyone shall be guaranteed the right to freedom of conscience, to 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." Russia had incorporated some of the most advanced international human rights norms governing religious liberty, proselytism, and change of religion.¹⁸

¹⁵ 1990 RSFSR Law, *supra* note 10, art. 25.

¹⁶ *Id.* art. 17. See also 1990 USSR Law, *supra* note 9, art. 23 ("Societies, brotherhoods, and other associations of citizens may be established under the auspices of religious organizations to engage in charity, the study and distribution of religious literature, and other educational and proselytizing activities.").

¹⁷ Translated in ALBERT P. BLAUSTEIN, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: THE RUSSIAN FEDERATION SUPPLEMENT (Albert P. Blaustein & Gisbert H. Flanz eds., 1993). See also generally analysis in Gunn, *supra* note 3; Homer & Uzzell, *supra* note 3.

¹⁸ On relevant international human rights norms, see Lerner, *supra* note 6. Article 15(4) of the Russian constitution explicitly incorporates by reference many of these international human rights laws: "If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply." KONSTITUTSIJA RF [Constitution] [KONST. RF] art. 15(4) (Russian Federation).

These strong legal guarantees helped to usher in what Mikhail Gorbachev proudly proclaimed to be “a golden age of religious liberty” in Russia.¹⁹ Various indigenous Orthodox, Catholic, and Protestant churches, seminaries, schools, and charities were restored or rebuilt—sometimes with the material support of local political leaders. Jewish synagogues, Muslim mosques, and Buddhist temples also began to be restored, along with a few schools, charities, and publishing houses. Religious literature, artwork, icons, candles, vestments, and other materials for worship were imported en masse and, later, produced locally. A host of long dormant Russian animist groups, goddess religions, personality cults, and occultist groups began to revive, especially outside the main cities. More startling was the rapid growth of several exotic and well-organized indigenous religions such as the Great White Brotherhood, the Center of the Mother of God, and the Church of the Last Testament.²⁰

This religious awakening came not only from within Russia, but also from without. Particularly after passage of the 1990 laws, foreign religious groups came to Russia and other former Soviet republics in unprecedented numbers. From the West, these included various Evangelicals, Pentecostals, mainline Protestants, Roman Catholics, Mormons, Unification Church Members, Scientologists, and others. From the Middle East, they included Shi'ite, Sunni, and Sufi Muslims, together with some Bah'ais. From the East, they included Presbyterians and Methodists from Korea; Hindus, Hare Krishnas, Rastafarians, and Buddhists from the Indian sub-continent; members of the Aum Association, Shri Chinmoy, the Rerikh Movement, and other groups from Japan. Many of these groups preached their beliefs

¹⁹ Commencement Address, Emory University, May 11, 1992. See also generally MICHAEL BOURDEAUX, GORBACHEV, GLASNOST, AND GOSPEL (1990).

²⁰ See TROYANOVSKY, *supra* note 7; Shchipkov, *supra* note 7; Sergei Filatov, *Cults, New Religious Movements and the Socio-Religious Situation in Post Soviet Russia*, in SOUL WARS IN RUSSIA, *supra* note 7; Sergei Filatov & Aleksandr Shchipkov, *Udmurtia: Orthodoxy, Paganism, Authority*, 25 RELIGION, STATE & SOCIETY 177 (1997).

and activities on the streets and door-to-door as well as through distribution of sermons, pamphlets, and texts. Other groups organized crusades, tent meetings, billboard advertising, and mass media events, or rented out stadiums, theaters, and community halls for religious festivals. Many of these groups also established schools, hospitals, charities, youth groups, old age homes, and other social services.²¹

The few reliable demographic studies available suggest that these foreign religious groups made rather modest gains against indigenous Russian groups. Seasoned Russian missiologists, Mark Elliott and Anita Deyneka, for example, show that in 1997, the Protestant missionary force in the entire former Soviet Union of over 280 million persons stood at 5,606 persons divided among 561 groups.²² To be sure, registered Russian Protestant churches, indigenous and foreign, more than doubled in number—from a total of 1002 in 1993 to 2280 in 1996. But indigenous Orthodox and Catholic Churches in Russia experienced nearly comparable growth, and their absolute numbers dwarf those of Protestants—from a total of 4815 registered groups in 1993 to 7666 in 1996.²³ Indeed, in 1996, there were more registered Muslim groups in Russia (2494) than all Protestant groups combined (2280).²⁴

²¹ See all sources *supra* note 20.

²² Elliott & Deyneka, *supra* note 4.

²³ Shchipkov, *supra* note 7, at 8-10. Shchipkov's list is drawn from 26 of "the most active" of 54 registered religious groups in Russia. For Protestants, broadly conceived, he lists the number of registered groups for 1993/1996 respectively: Lutherans (75/141); Methodists (14/48); Union of Evangelical Christians—Baptists of the Russian Federation (433/677); Council of Churches of Evangelical Christians—Baptists, 'Initsiativniki' (11/32); Union of Evangelical Christian Churches (37/248); Pentecostals (114/351); Evangelical Apostolic Churches (12/22); Seventh Day Adventists (114/222); Presbyterians (30/129); Non-Denominational Protestant Mission Organizations (86/213); Charismatic Churches (52/136); New Apostolic Church (24/61). For traditional Russian Orthodox and Catholic groups, he lists: ROC Moscow Patriarchate (4566/7195); Old Believers (108/164); Russian Free Orthodox Church (57/98); Roman Catholic Church (73/183). *Id.* at 9.

²⁴ Shchipkov, *supra* note 7, at 8-10; Arzt, *supra* note 5 (indicating that from 1990

The rate of growth of new religious groups in Russia in this same period was more impressive, but their absolute numbers remained very small. For example, Keston Institute recently commissioned a study, *inter alia*, of the Unification Church in Russia. According to the Keston study, the Unification Church had already begun secretly to enter the Soviet Union in the early 1980s, using tourist and business visas. It was among the first foreign groups to begin actively proselytizing in Russia in the mid-1980s. After the Rev. Moon met with President Gorbachev in 1990, the Unification Church sponsored an aggressive campaign of conferences, seminars, textbook distribution, study trips, and the like, aimed especially at political leaders and at lower school and university students and their teachers. "Tens of thousands" of Russians participated in these activities, and by 1994, more than 2,000 state schools used the "moral textbooks" furnished gratis by the Unification Church. Despite this massive effort and expense, the Unification Church in Russia at its peak in 1994 attracted only 5,000 members; by late 1997, the movement claimed fewer than 3,000 members.²⁵ Indeed, the three largest "totalitarian cults" (as they are called in Russia)—the Moonies, the Hare Krishnas, and the Jehovah's Witnesses—collectively had 248 registered groups in all of Russia in 1996.²⁶

B. *Storm Signals*

Whatever their real numbers and growth rates, the noisy arrival of these foreign religious groups eventually bred considerable resentment in Russia. Indigenous Protestant and Catholic groups began to resent the linguistic deficiencies and the fiscal leveraging of some of their Western and Korean co-religionists. Even more, these Russian Chris-

to early 1996, Muslim registered congregations tripled from 870 to 2,349).

²⁵ Filatov, *supra* note 20, at 2-4.

²⁶ Shchipkov, *supra* note 7, at 8-10 (listing Moonies with seven, Jehovah's Witnesses with 129, and Hare Krishnas with 112 registered groups).

tians resented the criticisms from afar of the doctrinal, liturgical, and ecclesiological innovations that they had introduced during their decades of isolation.²⁷ Russian Muslim leaders, as well as political officials, expressed increasing concern about the politicization of some Muslim groups inspired by "the Ayatollah Khomeini's Iranian messianism and Afghan mujaheddin agitation and propaganda."²⁸ A number of clashes also broke out between competing schools of jurisprudence within and among Shi'ite, Sunni, and Sufi groups—tensions sometimes exacerbated by the great ethnic, racial, and linguistic diversity within the Russian Muslim population.²⁹

By far the greatest expressions of concern, however, came from the Moscow Patriarchate of the Russian Orthodox Church. Already in 1991, Moscow Patriarch Aleksii II expressed dismay at the "massive influx" of foreign missionaries, both religious and economic, that competed for souls in "the new marketplace" of religious ideas in Russia.³⁰ Initially, his resentment was focused on missionary mavericks. These were culturally and linguistically inept missionaries, inclined toward "a wild West, free spirit, lone ranger approach to ministry" that resulted in "hit and run evangelism, with its neglect of disciplining for new believers and its inattention to respectful partnerships with existing churches."³¹ At the same time, officials within the Moscow Patriarchate singled out for special criticism the "totalitarian sects," charging that these groups used "illegitimate material inducements" to win new converts

²⁷ See Elliott & Deyneka, *supra* note 4.

²⁸ See Arzt, *supra* note 5.

²⁹ *Id.*

³⁰ See Elliott & Deyneka, *supra* note 3; Miroslav Volf, *Fishing in the Neighbor's Pond: Mission and Proselytism in Eastern Europe*, 20 INT'L BULL. MISSIONARY RES. 26 (1996).

³¹ See Elliott & Deyneka, *supra* note 4.

and then turned their converts against “their Russian families, faiths, and cultures.”³²

By 1993, the Moscow Patriarchate’s resentment was directed more generally at all “well organized and well-financed” mission groups, particularly from the West. Unwelcome “foreign proselytizing faiths” now included various Roman Catholics, mainline Protestants, and Western Evangelicals, alongside religious mavericks and totalitarian cults.³³ Members of the Patriarchate issued three general charges against them: (i) that all of these foreign proselytizing groups were forcing an impoverished and understaffed Russian Orthodox Church into an unfair competition for souls—not only lost souls on the Russian streets, but also saved souls in the Russian churches;³⁴ (ii) that many Western proselytizing groups seemed bent on breaking the soul of the Russian people—by inundating them with a toxic wave of Western materialism, individualism, and pluralism for which Russia was not, and could not be, prepared;³⁵ and (iii) that many of these foreign proselytizing groups were simply dangerous to the Russian people and to social order—by breaking up families, encouraging civil disobedience, extorting property and money, administering

³² Comments of Alexandr Dvorkin, Member of the Moscow Patriarchate Department of External Church Relations, at a conference at Oxford University, May 29, 1996, convened by Keston Institute, Oxford and the Law and Religion Program at Emory University. When the author pressed him at this conference, Mr. Dvorkin defined “illegitimate material inducements” to include the furnishing of humanitarian aid, English lessons, education, and employment; the inculcation of the public school curriculum with religious texts and rituals; the use of television, newspapers, and other mass media to propagate the faith; and the organization of “loud and insensitive crusading carnivals.”

³³ See summary in Berman, *supra* note 2. See also Dvorkin, *supra* note 32, who, when the author questioned him, included among “proselytizing faiths”: (i) Roman Catholics “who establish dioceses, parishes, and monasteries without Orthodox approval”; (ii) “traditional Protestant denominations,” including those are members of the World Council of Churches (Methodists, Finnish and German Lutherans, Free Evangelicals, and Korean Protestants); and (iii) “new religious movements” (Krishnas, Bah’ais, Moonies, and Jehovah’s Witnesses especially).

³⁴ See Nichols, *supra* note 6.

³⁵ See sources and discussion in Berman, *supra* note 2.

drugs and mind controls, committing battery, rape, and other offenses against recalcitrant members, and even inducing homicide, suicide, and insurrection as acts of faith.³⁶

Such charges against foreign proselytizing groups can be seen in dozens of statements issued by the Moscow Patriarchate in the period after 1993.³⁷ Metropolitan Kirill of Smolensk and Kaliningrad—"usually regarded as the second most powerful figure in the Russian Orthodox Church after Patriarch Aleksii II"³⁸—offered a typical retrospective assessment at a 1996 world conference on missions:

As soon as freedom for mission work was allowed, a crusade began against the Russian church even as it began recovering from a prolonged disease, standing on its feet with weakened muscles. Hordes of missionaries dashed in, believing the former Soviet Union to be a vast missionary territory. They behaved as though no local churches existed, no gospel was being proclaimed. They began preaching without even making an effort to familiarize themselves with the Russian cultural heritage or to learn the Russian language. In most cases the intention was not to preach Christ and the gospel but to tear the faithful away from their traditional churches and recruit them into their own communities. Perhaps these missionaries sincerely believed that they were dealing with non-Christian or atheistic communist people, not suspecting that our culture was formed by Christianity and that our Christianity survived through the blood of martyrs and confessors, through the courage of bishops, theologians, and laypeople asserting their faith.

³⁶ See sources and discussion in Gunn, *supra* note 4.

³⁷ See samples in V. Polosin & G. Yakunin, Federal Authorities and Freedom of Conscience 38-62 (Nov. 1996) (unpublished manuscript, on file with the *Emory International Law Review*).

³⁸ Michael Bourdeaux, *Glasnost and the Gospel*, in *THE POLITICS OF RELIGION IN RUSSIA AND THE NEW STATES OF EURASIA* 113, 120 (Michael Bourdeaux ed., 1995).

Missionaries from abroad came with dollars, buying people with so-called humanitarian aid and promises to send them abroad for study or rest. We expected that our fellow Christians would support and help us in our own missionary service. In reality, however, they have started fighting with our church. . . . All this has led to an almost complete rupture of the ecumenical relations developed during the previous decades. An overwhelming majority of the population refused to accept this activity, which offends people's national and religious sentiments by ignoring their spiritual and cultural tradition. Indeed, given the lack of religious education, people tend to make no distinction between the militant missionaries we are speaking about and ordinary people of other faiths or confessions. For many in Russia today, "non-Orthodox" means who those have come to destroy the spiritual unity of the people and the Orthodox faith—spiritual colonizers who by fair means or foul try to tear the people away from the church.³⁹

Patriarch Aleksii II complained of the corrosive values of liberalism that Western missionaries had fostered within the Russian Orthodox Church itself:

Orthodox consciousness is currently being eroded by extreme liberalism, capable of leading to tragic consequences for the Church—to schism, divisions in the church, the undermining of Orthodox beliefs and to ultimate destruction. We must stand against this destructive process by our constancy in faith and belief in the traditions and living Orthodox religious experience

³⁹ Metropolitan Kirill, *Gospel and Culture* (unpublished speech delivered at Conference on World Missions and Evangelism, World Council of Churches, Salvador, Bahia, Brazil, November 24 - December 3, 1996) (quoted with permission from the World Council of Churches) (copy on file with the *Emory International Law Review*). For Metropolitan Kirill's earlier reflections, see, e.g., his *The Church and Perestroika* (c. 1992), in TROYANOVSKY, *supra* note 7, at 82. See also Nichols, *supra* note 6.

of Christian love and concern for each individual believer and for Russia as a whole.⁴⁰

“In seeking to limit the incursion of missionary activity we often are accused of violating the right to freedom of conscience and the restriction of individual rights,” Patriarch Aleksii explained.

But freedom does not mean general license. The truth of Christ which sets us free (John 8:32) also places upon us a great responsibility, to respect and preserve the freedom of others. However, the aggressive imposition by foreign missionaries of views and principles which come from a religious and cultural environment which is strange to us, is in fact a violation of both religious and civil rights. It is painful for us to acknowledge that we also share an element of blame: people are leaving the Orthodox Church because of the deficiencies in our religious education and missionary work and because individual priests are unwilling to work diligently for the spiritual education of people coming into the church.⁴¹

The Council of Bishops meeting in Moscow made an even more pointed charge against foreign missionaries:

We express our concern in connection with the continuing proselytising activity of Protestant false missionaries in Russia [and] the growth of organised pseudo-Christian and pseudo-religious sects, of neo-pagan communities, occultists and devil worshippers in the CIS and the Baltic States. The Council is extremely troubled by the anti-Orthodox campaign

⁴⁰ Aleksii II, *supra* note 1, at 7, col. 1.

⁴¹ Aleksii II, Patriarch of Moscow and All Russia, *The Report to the Bishops Council in Moscow, February 18-23, 1997, Section 11: Interconfessional and inter-faith relations; participation in the activity of international Christian organizations*, 7 (103) PRAVOSLAVNAYA MOSKVA, Mar. 1997, at 4.

which is being waged by the followers of these pseudo-religious organisations and their protectors. The members of the Council call on the entire church to confront this false missionary activity and sectarianism through religious education and apologetics, by educating both Orthodox parishioners and society as a whole. We acknowledge that the right of each person to freedom of conscience and religion should be respected, but the leaders of these totalitarian sects are in fact depriving their followers of these rights and reacting aggressively to any criticism of their activity. Those who attempt to oppose them are subjected to cruel persecution by the sect leaders and their highly-placed protectors, including intimidation, psychological pressure, the gathering of incriminating information, slander, and repeated searches of their property.⁴²

These were not idle words. Officials of the Moscow Patriarchate several times requested restraint, even a one generation moratorium, on foreign mission activities in Russia. This would allow indigenous churches to recover from their Communist plight and enable them thereafter to compete fairly.⁴³ Orthodox theologians from Russia and abroad pressed this case with increasing urgency at various ecumenical conferences on mission.⁴⁴ Orthodox clergy that fell out of line with these official sentiments faced firm discipline, even to the point of defrocking and excommunication in extreme cases.⁴⁵

When such diplomatic and ecumenical entreaties failed, the Moscow Patriarchate turned to state law for its protection. Already in 1993, the Moscow Patriarchate joined with various nationalist groups to pressure the Russian Parlia-

⁴² *Resolution of the Council of Bishops in Moscow, Feb. 18-23, 1997* 7 (103) PRAVOSLAVNAYA MOSKVA, Mar. 1997, at 11.

⁴³ See Elliott & Deyneka, *supra* note 4. See also *Declaration of the Holy Synod of the Russian Orthodox Church, 3 April 1990*, in TROYANOVSKY, *supra* note 7, at 66.

⁴⁴ See Nichols, *supra* note 6.

⁴⁵ See generally Polosin & Yakunin, *supra* note 37.

ment to amend the 1990 RSFSR law.⁴⁶ The proposed amendments gave special protections, subsidies, and rights to “those religious organizations, the activity of which maintains and develops historical traditions and customs, national and cultural originality, art and other cultural heritage of the peoples of the Russian federation—that is, the traditional confessions of the Russian Federation.”⁴⁷ The proposed law stated categorically that foreign religious groups “have no right of religious-missionary activity in the Russian Federation.” Further, it instituted a series of cumbersome new registration and property regulations designed to deter and obstruct foreign mission groups already in place.⁴⁸ Under severe pressure from indigenous and foreign religious and political groups, the Russian Parliament law did not pass this proposed law in 1993, nor a variant on the same, proposed in 1995.

While the Russian Parliament initially did little to assuage the problem of proselytism in Russia, a number of local legislatures did. From 1993 to 1997, Lauren Homer and Lawrence Uzzell write, “more than one third of Russia’s 89 provincial governments enacted or considered laws or executive orders shrinking the rights of foreign religious organizations and religious minorities.”⁴⁹ These local laws, often passed under strong orchestration by the Russian Orthodox clergy, imposed various registration and accreditation requirements as a condition for any religious activity of the non-Orthodox, particularly those who were not Russian citizens. These local laws monitored, restricted, and discriminated against the religious speech, literature, and associations of non-Orthodox believers and groups. They placed limits on the access of non-Orthodox to public forums

⁴⁶ See sources and discussion in 1994 DeBurcht Report, *supra* note 10, at 3.

⁴⁷ A Law on Changes and Additions to the [1990] RSFSR Law on Freedom of Religion, art. 8 (August 27, 1993), *quoted and critiqued* in the 1994 DeBurcht Report, *supra* note 10, at 43-44, and in Berman, *supra* note 2.

⁴⁸ *Id.* art. 21, *quoted and critiqued* in the 1994 DeBurcht Report, *supra* note 10, at 29-42.

⁴⁹ Homer & Uzzell, *supra* note 3.

and media and restricted their ability to hold corporate property, build religious structures, or to gain permits to build and maintain religious schools, charities, and other ministries⁵⁰

Not all local governments were so repressive, and not all local officials were so cooperative in the repression. Dozens of provincial and municipal legislatures maintained more open policies toward religious outsiders. Occasionally, strong local officials and advocates also blocked efforts to impose anti-proselytism legislation. For example, in early 1997, the governor of St. Petersburg twice vetoed harsh anti-proselytism laws issued by the city council.⁵¹ Moreover, in a remarkable case issued on March 5, 1997, the Supreme Court of the Udmurt Republic struck down a Udmurtian religious registration law as unconstitutional—the first such case in Russia of successful judicial review of these anti-proselytism laws. The Udmurt law, which encumbered and fined the missionary activities of several Russian Pentecostal groups, was found to violate a number of religious liberty provisions of the 1993 Russian constitution and the Udmurt provincial constitution, as well as Russia's obligations under prevailing international human rights laws.⁵² These isolated local cases held the promise that a federalist system of government might provide some protection for religious liberty, regardless of what took place in Moscow.

C. *The 1997 Freedom of Conscience Law*

The promises of Russia's "golden age of religious liberty" ended on September 26, 1997, the day Russian President

⁵⁰ *Id.* See also Polosin & Yakunin, *supra* note 37, at 16-38. For samples of these provincial and municipal laws, see Appendices to this issue: 12 EMORY INT'L L. REV. 657 (1998).

⁵¹ Homer & Uzzell, *supra* note 3.

⁵² The case is analyzed in *id.*; excerpts from the opinion are included in the Appendices to this issue: 12 EMORY INT'L L. REV. 657 (1998).

Boris Yeltsin signed a new law "On Freedom of Conscience and on Religious Associations."⁵³ This new law—passed after four years of open advocacy and four months of secret machinations by the Moscow Patriarchate and various nationalist groups within Russia—institutes a system of stern state registration and regulations on religion.⁵⁴ The 1997 law supersedes the 1990 RSFSR law.⁵⁵ It preempts all provincial and municipal laws on religion to the contrary.⁵⁶ New draft regulations, issued in January 1998, will ensure the rapid execution of the 1997 law.⁵⁷ These same draft regulations also exacerbate some of its harshest provisions—for example, by imposing a new registration fee on all foreign religious organizations of "fifty times the minimum monthly wage established by the laws of the Russian federation."⁵⁸

The 1997 Freedom of Conscience Law effectively establishes three classes of religions in Russia: (i) the Russian Orthodox Church, which receives full legal protection and

⁵³ On the Freedom of Conscience and Religious Associations, Federal Law No. 125-FZ (Sept. 26, 1997, available in LEXIS, Inlaw Library, Rfarch File ["1997 Freedom of Conscience Law"]. This law is also available at *On Freedom of Conscience and Religious Associations* (visited Feb. 7, 1998) <<http://www.stetson.edu/~psteeves/rel-news/freedomofconscienceeng.html>>. An English translation is furnished in the Appendices to this issue: 12 EMORY INT'L L. REV. 657 (1998).

⁵⁴ On the legislative history of the 1997 law, see Lawrence A. Uzzell, *Letter from Moscow*, 79 FIRST THINGS 17-19 (Jan. 1998); International Academy for Freedom of Religion and Belief, Analysis of the Russian Legislation "On Freedom of Conscience and on Religious Associations" and Recommendations for Compromise (August 29, 1997) (unpublished manuscript, on file with the *Emory International Law Review*); Law and Liberty Trust Alert: Duma Adopts Revised Legislation (unpublished manuscript, on file with the *Emory International Law Review*).

⁵⁵ See 1997 Freedom of Conscience Law, *supra* note 53, art. 27.6.

⁵⁶ *Id.* art. 2.2.

⁵⁷ Regulations for the State Registration of Religious Organizations in the Judicial Bodies of the Russian Federation (copy on file with the *Emory International Law Review*) ["1998 Regulations"]. See also detailed analysis in Durham & Homer, *supra* note 3.

⁵⁸ Resolution on the Procedure for Opening the Missions of Foreign Religious Organizations in the Russian Federation, ¶ 5 (copy on file with the *Emory International Law Review*) ["Resolution"].

various state benefits; (ii) various traditional Christian, Muslim, Jewish, and Buddhist groups, which receive full legal protection, but fewer state benefits; and (iii) all other religious groups, which receive only a *pro forma* guarantee of freedom of worship and liberty of conscience.

The tripartite classification of religious groups is adumbrated in the preamble to the 1997 law. The preamble "recogniz[es] the special contribution of Orthodoxy to the history of Russia and to the establishment and development of Russia's spirituality and culture." It further "respect[s] Christianity, Islam, Buddhism, Judaism, and other religions and creeds which constitute an inseparable part of the historical heritage of Russia's peoples." For the rest, the preamble provides only that it "consider[s] it important to promote the achievement of mutual understanding, tolerance, and respect in questions of freedom of conscience and freedom of creed."⁵⁹

This tripartite classification is elaborated in the eighteen articles on religious associations set out in the 1997 Freedom of Conscience Law and the 1998 draft administrative regulations in amplification of the same.⁶⁰ The 1997 law defines a religious association as a "voluntary association of citizens of the Russian federation and other persons permanently and legally residing [therein] formed with the goals of joint confession and possessing features corresponding to that goal: a creed, the performance of worship services, religious rituals, and ceremonies; the teaching of religion and religious upbringing of its followers."⁶¹

Religious *associations* are differentiated into (i) religious *organizations*, which receive a wide array of protections and benefits; and (ii) religious *groups*, which receive only minimal protections. Religious organizations, in turn, are divided into (a) favored *central* groups (the Russian Orthodox

⁵⁹ 1997 Freedom of Conscience Law, *supra* note 53, Preamble.

⁶⁰ *See id.* arts. 6-24 and 1998 Regulations, *supra* note 58.

⁶¹ 1997 Freedom of Conscience Law, *supra* note 53, art. 6.1.

Church); and (b) less favored *local* groups (mostly other "traditional" Russian religions).

Religious *organizations* receive "juridical personality"—the basic right to exist as a legal entity, from which a number of other rights automatically follow.⁶² "Religious organizations can own buildings, plots of land, objects for the purpose of production and for social, charitable, educational, and other purposes, articles of religious significance, financial means and other property which is essential for their activity including that necessary for historical and cultural monuments."⁶³ Religious organizations can acquire property by purchase or donation and devote it to multiple uses—worship, pilgrimage, hospitals, cemeteries, children's homes, charities, cultural or educational institutions, seminaries, and "business undertakings."⁶⁴ Such properties are generally held free from state taxation, and those properties devoted to worship are immune from "proceedings by creditors."⁶⁵

Religious organizations are also assured of various affirmative rights. They have the right to undertake charitable activities, including the administration of chaplaincy and other religious services in state hospitals and "places of detention."⁶⁶ "Religious organizations have the right to produce, acquire, export, and distribute religious literature, printed, audio and video material and other articles of religious significance. Religious organizations have the exclusive right to institute enterprises for producing liturgical literature and articles for religious services."⁶⁷ Religious organizations have the right to establish and maintain contacts with co-religionists abroad, and have "the exclusive right to invite foreign citizens for professional purposes, in-

⁶² *Id.* art. 7.1.

⁶³ *Id.* art. 21.1.

⁶⁴ *Id.* art. 16; art. 18; art. 21.2-3; art. 23.

⁶⁵ *Id.* art. 4.3; art. 21.5.

⁶⁶ *Id.* art. 16.2-3; art. 18.1.

⁶⁷ *Id.* art. 17.1-2.

cluding preaching and religious activity in the said organizations. . . .”⁶⁸

Religious organizations are also entitled to certain direct benefits from the state. They have “the right to use for their own needs plots of land, buildings and property provided by state, municipal, social and other organizations . . . free of charge.”⁶⁹ Moreover, the state “is to provide financial, material, and other aid to religious organizations in the restoration, maintenance, and protection of buildings and objects which are monuments of history and culture, and also in providing instruction in general educational subjects in educational institutions created by religious organizations. . . .”⁷⁰

This impressive panoply of rights and benefits does not come automatically. Only properly registered religious associations are classified as “religious organizations” and entitled to these rights and benefits. It is here that the 1997 law works its greatest injustice. And it is here that the law establishes, in effect, “another Council for Religious Affairs (the name of the hated body which oversaw, and controlled the persecution of, the Churches in the days of Communism).”⁷¹

The law distinguishes between “local” and “centralized” registered organizations. Local religious organizations must consist of “ten or more participants who are at least 18 years of age and who are permanently residing in one locality or in one urban or rural settlement.”⁷² Centralized religious organizations must consist “of no fewer than three local religious organizations.”⁷³ Once a religious organization is deemed “centralized,” as is the case with the hierar-

⁶⁸ *Id.* art. 20.1-2.

⁶⁹ *Id.* art. 22.1-2.

⁷⁰ *Id.* art. 4.3.

⁷¹ Michael Bourdeaux, *Religious Freedom Russian Style*, THE TABLET, Sept. 27, 1997, at 1216.

⁷² 1997 Freedom of Conscience Law, *supra* note 53, art. 8.3.

⁷³ *Id.* art. 8.4.

chical Russian Orthodox Church, every new local unit created thereafter is automatically registered as a religious organization. If a religious organization is only "localized," however, as in the case of many Protestant, Mormon, Jewish, and other congregationally-organized religious communities, each new local unit must be registered separately.⁷⁴

Only "centralized religious organizations which have been active [in Russia] on a legal basis for no fewer than fifty years" may use the term "Russian" in their title.⁷⁵ The Russian Orthodox Church is the only group that qualifies. Other traditional religions of Russia, such as Muslims, Jews, and Buddhists, were arguably "illegal" after 1917. Even if they are considered "legal," they were not "centralized."⁷⁶ The Orthodox Church's right to use the term "Russian" is more than honorary. In practice, this is the only religious organization that receives the promised governmental subsidies for the "restoration, maintenance, and protection of buildings and objects which are monuments of history and culture."⁷⁷

Centralized or local religious communities that "existed" in Russia "no less than 15 years" must register only once to be categorized as "religious organizations."⁷⁸ Once registered, they are thereafter automatically entitled to the full range of rights and benefits set forth above—save the direct benefits and subsidies reserved to the Russian Orthodox Church alone. In reality, this "15 year" provision covers only a few "traditional" Russian groups—Muslims, Jews, Buddhists, and some Christians.⁷⁹ As Lawrence Uzzell explains:

⁷⁴ *Id.* art. 8.1-6 and 9.1-2.

⁷⁵ *Id.* art. 8.5 (emphasis added).

⁷⁶ See Berman, *supra* note 2 (on the 1905 Act).

⁷⁷ 1997 Freedom of Conscience Law, *supra* note 53, art. 4.3 and 22.1. See also Durham & Homer, *supra* note 3.

⁷⁸ 1997 Freedom of Conscience Law, *supra* note 53, art 9.1.

⁷⁹ Arzt, *supra* note 5.

These provisions discriminate in favor of those religious associations that were legally registered under the Soviet state fifteen years ago and against those that were founded more recently or that existed only illegally or semi-legally during the Soviet years. Thus, for example, the favored category included many Baptist congregations—those which were willing during the pre-glasnost era to make the compromises needed to get official registration. . . . [But the Roman] Catholics have only two parishes in all of the Russian Federation that were legally registered and functioning fifteen years ago.⁸⁰

The other 160 Roman Catholic parishes in Russia today, the diocesan administrations in Moscow and Novosibirsk, the Catholic seminary in St. Petersburg, the dozens of Catholic orders, publishing houses, charities, and other groups affiliated with Rome have “now been reduced to second-class status.”⁸¹

This “second class status” is occupied by all religious communities in Russia that do not meet either the “50 year” or the “15 year” registration provisions. The 1997 law categorizes all these as “new” religions, regardless of their real vintage. “New” religions are required to register annually with local and/or centralized authorities. The registration procedures are cumbersome, fraught with delay and discretion, and expensive. Applicants for local religious organization status must submit an application form; a list of all members’ names, addresses, and dates of birth; their minutes and religious charters (which must include detailed statements about their organization and its finances, activities, purposes, and “other information relevant to the peculiarities of their activities”).⁸² Applicants for centralized organization status must furnish this same information for each of its local units, plus certification from local govern-

⁸⁰ Uzzell, *Letter from Moscow*, *supra* note 55, at 18.

⁸¹ *Id.*

⁸² 1997 Freedom of Conscience Law, *supra* note 53, arts. 10.2 and 11.5

ments of their continuous presence in that locale. Applicants must also submit a fee of “fifty times the minimum monthly wage established by the laws of the Russian federation.”⁸³ A “new” religious community, once properly registered, is categorized as “a religious organization” with all attendant rights and benefits—but only for a year. After a year, the community must register anew.

Registration can be denied, or a registered group can be dissolved, on any number of stated grounds. Some of the grounds set forth in the 1997 law are reasonable enough—“by decision of their founders”; because of the group’s “creation of armed units”; or “in the case of frequent and gross infringement of the norms of the Constitution . . . or federal law.”⁸⁴ But some of these stated grounds seem to target existing groups in Russia that have come under explicit criticism of the Moscow Patriarchate. Grounds such as “forcing a family to disintegrate” and “forcing members . . . to alienate property to the religious association” seem to target the Unification Church, Hare Krishnas, and other “totalitarian cults.” “Encouraging suicide” seems to target Solar Templars and members of the Great White Brotherhood. “[R]efusal on religious grounds of medical help” seems to target some Jehovah’s Witnesses and Christian Scientists. “Hindering the receiving of compulsory education” seems directed at various Free Church and evangelical Christian groups that insist on religious or home schooling. “Hindering a citizen from leaving a religious association” seems directed at both traditional Muslim and Jewish groups as well as various New Age cults, who discourage conversion out of the faith. “Inciting citizens to refuse their civic obligations” seems to target especially Jehovah’s Witnesses, but it is sufficiently vague to reach a

⁸³ Resolution, *supra* note 58, at para. 5.

⁸⁴ 1997 Freedom of Conscience Law, *supra* note 53, art. 14.1. *But see* 1998 Regulations, *supra* note 57, ¶ 24 (softening the last provision into “the objectives and activities of the religious organizations are at variance with the Constitution of the Russian Federation and legislation in force”).

number of religious groups that are cultural non-conformists.⁸⁵

Even more vague and more expansive grounds for denial of registration or dissolution of a religious organization have been smuggled into the new draft regulations implementing this law. These include: "if the founder(s) of the religious organization is (are) incompetent"; if "the organization being established is not recognized as a religious one;" and "on the grounds of a judicial ruling in cases established by law."⁸⁶

Those religious communities that cannot—or for religious or political reasons, will not—register themselves are categorized as "religious groups." Religious groups "have the right to carry out worship services, religious rituals, and ceremonies, and also the teaching of religion and religious upbringing of their followers."⁸⁷ But, lacking the status of legal entities, they are guaranteed nothing more.

Religious groups are subject to a number of explicit restrictions and disabilities. Such groups have no right of juridical personality, no right to hold collective property, and no access to state material benefits to religion. Their clergy and members are denied conscientious objection status to military participation.⁸⁸ They cannot create or own schools, seminaries, or other educational institutions, nor have their faith taught in local state schools.⁸⁹ They may not have "a representative body of a foreign religious organization" in place in Russia.⁹⁰ They may not carry out religious rites or services, or furnish chaplain services, in hospitals, health centers, children's homes, homes for the aged or handicapped, or prisons.⁹¹ They may not produce, acquire, export,

⁸⁵ 1997 Freedom of Conscience Law, *supra* note 53, art. 14.2.

⁸⁶ 1998 Regulations, *supra* note 57, ¶ 24, 31.

⁸⁷ 1997 Freedom of Conscience Law, *supra* note 53, art. 7.2.

⁸⁸ *Id.* art. 27.3 with art. 3.4.

⁸⁹ *Id.* art. 27.3 with arts. 5.3, 5.4, 18.1, 18.2, 19

⁹⁰ *Id.* art. 27.3 with art. 13.5.

⁹¹ *Id.* art. 27.3 with 16.3.

import, or distribute religious literature, videos, and other articles of religious significance, nor may they establish local institutions for the production of the same.⁹² They may not invite foreign citizens into Russia to preach or carry on religious activities.

Much of this complex law on religious associations contradicts the guarantees of individual and corporate religious liberty set forth elsewhere in the 1997 Freedom of Conscience Law.⁹³ The preamble to this 1997 law, for example, confirms "the right of each to freedom of conscience and freedom of creed, and also to equality before the law regardless of his attitude to religion and his convictions." Article 2.3 states boldly that "[n]othing in the law . . . may be interpreted in such a way as to diminish or limit the rights of man and citizen to freedom of conscience and freedom of creed." Article 4 provides familiar guarantees of freedom of all from discrimination, abuse, coercion, or other deprivations on religious grounds.⁹⁴ It further guarantees to all persons "the right to confess, individually or jointly with others, any religion or not to confess any, and the freedom to choose, change, possess or disseminate religious or other convictions and to act in accordance with them."⁹⁵ The 1997 law guarantees that "[t]he Russian federation is a secular state. No religion may be established as a state or compulsory religion. Religious associations are separate from the state and are equal before the law."⁹⁶ In amplification of this guarantee, the 1997 law repeats a number of the provisions of the 1990 law on separation of church and state.⁹⁷ Even the most skillful casuistry cannot explain away the blatant contradictions between these guarantees

⁹² *Id.* art. 27.3 with arts. 17.1 and 17.2.

⁹³ See analysis in Durham & Homer, *supra* note 3; Johan D. van der Vyver, The 1997 DeBurcht Conference on Religious Freedom in Russia (unpublished manuscript, on file with the *Emory International Law Review*).

⁹⁴ 1997 Freedom of Conscience Law, *supra* note 53, arts. 3.2-3.7.

⁹⁵ *Id.* art. 3.1.

⁹⁶ *Id.* art. 4.1.

⁹⁷ *Id.* art. 4.2.

of religious liberty for all and the discriminatory draft regulations on religious associations.

The 1997 Freedom of Conscience Law is not only blatantly self-contradictory but also violates a number of the most basic human rights guarantees. As Jeremy Gunn demonstrates, the 1997 law must respect the human rights norms of the 1993 Russian Constitution, the 1966 International Covenant on Civil and Political Rights, and the 1950 European Charter of Human Rights, to all of which Russia has pledged to adhere. The 1997 law defies these norms openly and without justification. It violates the rights of equality between citizens and noncitizens and the prohibitions against nondiscrimination on grounds of religion. It tramples on basic rights of freedom of thought, religion, and belief, freedom of expression, and freedom of association.⁹⁸

The injustice of the 1997 law was not lost on Russia's political and religious leaders when they were crafting it. Many religious groups and human rights advocates in Russia formally protested earlier drafts of the bill—the Baptist Union, the Pentecostal Union, the Seventh Day Adventists, the Union of Councils for Soviet Jews, the Roman Catholic Church, the Russian Orthodox Free Church, the Russian Orthodox Church Abroad, and the Old Believers. Pope John Paul II sent a personal letter to President Yeltsin protesting the bill. Several Western Europe heads of state and the Council of Europe registered their stern objections with President Yeltsin, with members of his Cabinet, and with members of the Russian Parliament. President Clinton and former President Carter did likewise, together with 160 senators and representatives in the U.S. Congress. Human rights organizations and religious liberty experts from around the world issued a torrent of detailed and devas-

⁹⁸ Gunn, *supra* note 3, *passim*.

tating criticisms of draft bills, many of which came into the hands of members of the Russian Parliament.⁹⁹

Indeed, the best summary critique of the 1997 law was provided by President Boris Yeltsin himself in a letter supporting his veto of a penultimate version of this law—all of whose most objectionable provisions remained in the law he signed in September.¹⁰⁰ In his veto message of July 23, 1997, Yeltsin wrote that the law “contradicts the foundations of the constitutional structure of the Russian federation and generally recognized principles and norms of international law.” The law “characterizes the Russian federation as a secular state, but . . . it introduces discriminatory rules of registration and reregistration of religious organizations. . . .” The law states its adherence to principles of religious freedom and equality but many of its provisions “are deliberately aimed at the restrictions of the rights of citizens of the Russian federation.” “Still more seriously infringed are the rights of foreign citizens and persons without citizenship [since] they do not have the right to profess and disseminate belief corporately and they can meet their religious needs only on an individual basis.” Moreover, Yeltsin wrote, “[t]here is a serious unconstitutional provision in the federal law in the absence of a principle of equality of religious associations before the law.” The requirement that “foreign religious organizations may be [represented] only under Russian organizations” improperly renders foreign groups “directly dependent on the attitude of Russian religious organizations.” It also renders Russian religious groups effective “agencies of state authority”—a violation of “the principle of the separation of religious associations and the state.” Yeltsin took particu-

⁹⁹ Derek H. Davis, *Editorial: Russia's New Law on Religion: Progress or Regress*, 39 J. CHURCH & STATE 643, 647-48 (1997). See further analysis in Gunn, *supra* note 3.

¹⁰⁰ Letter from the President of the Russian Federation, Boris Nikolaevich Yeltsin, to the President of the State Duma, G.N. Seleznev, and President of the Federation Council, E.S. Stroev, July 23, 1997.

lar umbrage that "local administrative units" could make the decision "about the existence of a centralized religious organization"—thundering that "the President of the Russian Federation already has expressed frequently" his disdain of such an "unconstitutional practice," "specifically twice by refusing to sign such a law."

President Yeltsin also objected to the "constitutional inequality" of privileging the Russian Orthodox Church "as an integral part of the all-Russian historical, spiritual, and cultural heritage." It was likewise "impermissible" to render the status of other religious groups dependent on an artificial fifteen year registration period. Yeltsin found it unconstitutional and inequitable to allow the state "to give financial, material, and other aid to religious organizations" for religious education. After citing several other inconsistencies and unconstitutional provisions in the law, Yeltsin concluded his veto letter thus:

In order to secure the full participation of the Russian federation in the integrative processes not only in Europe but also in the whole world, in light of the multiconfessional nature of the population of the Russian federation, the problem of securing the guarantees of human and civil rights and freedoms in the area of freedom of religious profession, the choice and dissemination of religious convictions, and the equality of religious associations before the law has exceptionally great importance. In order to avoid international isolation of the traditional Russian confessions and to prevent conflicts on religious bases within the country and to avoid charges against the Russian federation of persecution for convictions, . . . to bring the federal law . . . into conformity with the constitution of the Russian federation, with international legal norms, with other laws of the Russian federation, and also to remove the internal contradictions of the law, I submit that it is necessary to make substantial revisions.

No such substantial revisions were made. Every one of the offensive provisions in the July draft law which Yeltsin vetoed remained in place in the September draft which he signed into law.¹⁰¹ As Yeltsin predicted, "traditional Russian confessions," particularly the Russian Orthodox Church, have experienced considerable "international isolation." Even worse, Russia now faces massive "conflicts on religious bases" and many "charges against the Russian federation of persecution for convictions."

II. ONTOLOGICAL DIFFERENCES

Russia has moved from *glasnost* to soul wars—from the open embrace of religious rights for everyone to tight restrictions on everyone's rights, save those of the Orthodox. Today in Russia, the Orthodox Church is free and favored by the state. Indigenous Russian Christians, Muslims, Jews, and Buddhists are mostly free, but they are on their own. Foreign religions, particularly from the West, are neither free nor welcome. None of this religious line-drawing has been done in secret or in ignorance of Russia's human rights obligations. Russian leaders, from the Patriarch to the President, have telegraphed their protectionist intentions for the whole world to see and have calculated their religious discrimination so carefully that no religious person or group can be confused about where they stand.

There is more at stake in the current war for souls than temporary concerns over unfair religious competition, unsafe religious practices, or unruly religious policies in the provinces. These problems are serious enough, but they cannot fully explain why the Russian establishment would court such international opprobrium in their time of great economic need. If these problems were all that was at stake, surely a diplomatic solution could be crafted. Surely, these warring parties could agree to a ten, fifteen, or twenty

¹⁰¹ See analysis in Durham & Homer, *supra* note 3.

year moratorium on further foreign missions to Russia, for example—with the interim period used for intense interreligious dialogue and education, for policing of the more belligerent and dangerous groups in Russia, for multilateral negotiations on future Russian visa and import controls that affect religious groups, for aggressive affirmative actions programs to shore up beleaguered Russian religions, and the like.

There are deeper sources of this war for souls in Russia. Orthodox Ecumenical Patriarch Bartholomew of Constantinople hinted at these sources repeatedly during his lecture tour in the United States last October. Responding to American church overtures for greater cooperation with the Orthodox churches, and greater respect among them for human rights values, the Patriarch replied: “The Orthodox Christian does not live in a place of theoretical and conceptual conversations, but rather in a place of an essential and empirical lifestyle and reality as confirmed by grace in the heart.”¹⁰² “The Orthodox Church is not a museum church. . . . It is a living church which, although keeping the old traditions from the very beginning, nevertheless understands very well the message of every new era, and it knows how to adapt itself to the conditions of every period of human history.”¹⁰³ The Orthodox Church’s adaptations in matters of theology, polity, and law over the centuries have differed from those of Western Christianity. “The divergence between us [on these points] continually increases,” the Patriarch stated, “and the end point to which our

¹⁰² Address of His All Holiness Ecumenical Patriarch Bartholomew Phos Hilaron, Joyful Light, at Georgetown University, Washington, DC, October 21, 1997 (visited Mar. 3, 1998) <[http://www2.goarch.org/patriarchate/us-visit/speeches/Fwd Address at Georgeto.htm](http://www2.goarch.org/patriarchate/us-visit/speeches/Fwd%20Address%20at%20Georgeto.htm)>.

¹⁰³ Quoted in WASH. POST (Oct. 25, 1997), H12. See also the statement of Metropolitan Kirill on January 1, 1998: “In the wave of democratic transformation many people have begun to demand revolutionary changes of the church. But the church is alien to the path of radical reforms and revolutions. Natalia Zhelnorova, *Church and Believers: Approach God Together or Separately* <<http://www.stetson.edu/rel-news>>.

courses are taking us, foreseeably, are indeed different." But the heart of our difference is "something deeper and more substantive. The manner in which we exist has become ontologically different."¹⁰⁴

Western Christianity exists under "the shadow of the Enlightenment," the Patriarch explained. Orthodox Christianity does not. The Enlightenment provides too little room for faith and too much room for freedom. "Since the Enlightenment, the spiritual bedrock of Western civilization has been eroded and undermined. Intelligent, well-intentioned people sincerely believed that the wonders of science could replace the miracles of faith. But these great minds missed one vital truth—that faith is not a garment, to be slipped on and off; it is a quality of the human spirit, from which it is inseparable."¹⁰⁵ "There are a few things America [and the rest of the West] can learn from the Orthodox Church," the Patriarch declared. Foremost is the lesson "that, paradoxically, faith can endure without freedom, but freedom cannot long abide without faith."¹⁰⁶ A balance must be struck between freedom and faith, as the transplanted Orthodox churches of the West have only recently come to realize. "Orthodox Christians, who live in a country where full religious freedom reigns and where adherents of various religions live side by side[,] . . . [constantly see various ways of living and] are in danger of being beguiled by certain of them, without examining if their way is consonant with the Orthodox Faith. Already, many of the old and new Orthodox . . . are stressing different, existing deviations from correct Orthodox lives."¹⁰⁷

"Ontological differences" between the Orthodox and the non-Orthodox, between the East and the West. These are

¹⁰⁴ Address of His All Holiness Ecumenical Patriarch Bartholomew Phos Hilaron, *supra* note 102.

¹⁰⁵ *In His Own Words*, WASH. POST, Oct. 25, 1997, at H12.

¹⁰⁶ *Id.*

¹⁰⁷ Terry Mattingly, *Analyzing the Problems Being Faced by the Growing Orthodox Christian Church*, JUPITER COURIER, Nov. 16, 1997, at A17.

deep, and often intractable, sources of the current war for souls in Russia. The Russian people, the Russian Church, and the Russian State are fundamentally different from their counterparts in the West—in their traditions and experiences, in their anthropology and psychology, in their world views and visions. These fundamental differences have led to intense mutual misunderstanding between East and West, and between Orthodox and Western Christians, in recent months. These fundamental differences have thwarted any attempts to craft simple legal, political, or diplomatic solutions to the current war for souls.

Two dimensions of these ontological differences recur in this symposium—(i) theological differences over the concepts of mission and proselytism; and (ii) cultural differences over the concepts of church, state, and nation. Other differences could also be discussed, but these are at the center of the war for souls and require some attention.

A. *Change of Religion, Mission, and Proselytism*

Russian Orthodoxy and Western Christianity have competing understandings of evangelism and proselytism. Natan Lerner puts the conflict sagely: “What constitutes the sacred duty of evangelization for one group is seen by another group as improper proselytizing. Some groups would consider a given act a normal exercise of freedom of expression and freedom of teaching or propagating a religion or belief; others would view this same act as an illegitimate intrusion into their intimacy, their group identity, and a violation of their freedom of conscience.”¹⁰⁸ This problem of perspective, which Lerner parses carefully in human rights terms, must also be parsed in theological terms.

Russian Orthodox Christians and Western Evangelical Christians, especially, have the most sharply juxtaposed

¹⁰⁸ Lerner, *supra* note 6.

theologies of mission.¹⁰⁹ Some of these differences over missiology reflect more general differences in theological emphasis. Russian Orthodox tend to emphasize the altar over the pulpit, the liturgy over the homily, the mystery of faith over its rational disputation, and the priestly office of the clergy over the devotional tasks of the laity. Western Evangelicals generally reverse these priorities—and sometimes accuse the Orthodox of idolatry, introversion, and invasion of the clergy into the believer's personal relationship with God.¹¹⁰

These differences in theological emphasis are exacerbated by conflicting theologies of the nature and purpose of mission. Evangelicals assume that, in order to be saved, every person must make a personal, conscious commitment to Christ—to be born again, to convert. Any person who has not been born again, or who once reborn now leads a nominal Christian life, is a legitimate object of evangelism—regardless of whether the person has already been baptized. The principal means of reaching that person is through proclamation of the Gospel, rational demonstration of its truth, and personal exemplification of its efficacy. Any region of the world that has not been open to the Gospel is a legitimate "mission field"—regardless of whether the region might have another Christian church in place.¹¹¹ Under this definition of mission, Russia and its people are prime targets for Evangelical witness. For many Western Evangelicals, the Russian Orthodox Church is prone to political corruption, clerical indiscipline, and mystical idolatry, and it has not discharged its responsibilities for mission among its people. The Russian people, in turn, are prone to drunkenness, indiscipline, and nominal Christian identity, and they are thus in need of the saving grace of the Gospel.

¹⁰⁹ For corresponding Roman Catholic and Conciliar Ecumenical views, see Nichols, *supra* note 6.

¹¹⁰ Elliott & Deyneka, *supra* note 3.

¹¹¹ See *id.*; Nichols, *supra* note 6.

The Russian Orthodox Church, too, believes that each person must come into a personal relationship with Christ in order to be saved. But such a relationship comes more through birth than rebirth, and more through regular sacramental living than a one-time conversion. A person who is born into the Church has, by definition, started, *theosis*—the process of becoming “acceptable to God” and ultimately “coming into eternal communion with Him.”¹¹² Through infant baptism, and later through the Mass, the Eucharist, the icons, and other services of the Church, a person slowly comes into fuller realization of this divine communion. Proclamation of the Gospel is certainly an important means of aiding this process of *theosis*. It is especially effective in reaching those not born into the Russian Orthodox Church. But, for the Russian Orthodox, Joel Nichols writes, “mission does not aim primarily at transmission of moral and intellectual convictions and truths, but at the . . . incorporation of persons into the communion that exists in God and in the Church.”¹¹³

This theology leads the Russian Orthodox Church to a quite different understanding of the proper venue and object of evangelism. The territory of Russia is hardly an open “mission field” which Evangelicals are free to harvest. To the contrary, much of the territory and population of Russia is under the exclusive spiritual protectorate of the Russian Orthodox clergy. Any person who has been baptized into the Russian Orthodox Church is no longer a legitimate object of evangelism—regardless of whether that person now leads only a nominal Christian life. Indeed, according to some Orthodox writers, any person who is born in the territory of Russia can at first be evangelized by the Russian Orthodox Church alone; only if that party actively spurns the Orthodox Church does he become a legitimate

¹¹² Elliott & Deyneka, *supra* note 3.

¹¹³ Nichols, *supra* note 6.

object of the evangelism of a non-Orthodox person or group.¹¹⁴

This is the theological source of the Patriarchate's repeated complaints about "the proselytising activity of many Protestant churches, missionary organisations, and individual preachers . . . on the historical territory of our Church."¹¹⁵ The Patriarchate is not only complaining about improper methods of evangelism—the bribery, blackmail, coercion, and material inducements used by some groups; the garish carnivals, billboards, and media blitzes used by others. The Patriarchate is also complaining about the improper presence of missionaries in Russia altogether—regardless of the methods of evangelism they use. The Patriarchate's real concern is that many Christians have come not to aid the Orthodox Church in its own mission, but to compete with the Orthodox Church for its own souls on its own territory. "The Patriarch has quoted, in this connection, the Epistle of St. Paul to the Romans, where the Apostle said: 'It is my ambition to bring the gospel to places where the very name of Christ has not been heard, for I do not want to build on another man's foundation'. (Rom. 15:20) . . . [T]he Moscow Patriarch welcomes friendly visits by Russian Christians of other denominations from other countries, but opposes their proselytism of Russian Christians."¹¹⁶

Human rights norms alone will ultimately do little to resolve this fundamental theological difference between Russian Orthodox and Western Christians. Remember the Patriarch's words quoted earlier: "In seeking to limit this incursion of missionary activity we often are accused of violating the right to freedom of conscience and the restriction of individual rights. But freedom does not mean general license. The truth of Christ which sets us free (John

¹¹⁴ Elliott & Deyneka, *supra* note 3.

¹¹⁵ Aleksii II, *supra* note 41, at 2.

¹¹⁶ Berman, *supra* note 2.

8:32) also places upon us a great responsibility, to respect and preserve the freedom of others."¹¹⁷ The Russian Orthodox Church must be as free in the exercise of its missiology as Western Evangelicals wish to be. Both groups' rights, when fully exercised, inevitably clash. One group's right must give way to the other's.

Harold Berman, Anita Deyneka, Mark Elliott, and Joel Nichols, therefore, all properly urge a theological resolution of the war for souls, as much as a human rights solution. Interreligious dialogue, education, and cooperation sound like tried and tired remedies, but these are essential first steps to a greater mutual understanding. Elliott and Deyneka propose sage additional guidelines for missionaries in Russia: "know and appreciate Russian culture"; "avoid Westernization of the Gospel"; "respect the rights of all religions and cooperate with other Christians wherever possible"; "proclaim the Gospel in word and deed."¹¹⁸

The ultimate theological guide, on both sides, must be a more careful balancing of the Great Commission and the Golden Rule. Christ called his followers to mission: "Go therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Ghost, teaching them to observe all that I have commanded you."¹¹⁹ But Christ also called his followers to restraint and respect: "Do unto others, as you would have done unto you."¹²⁰ If both sides in the current war for souls would strive to hold these principles in better balance, their dogmatism might be tempered and their conflicts assuaged.

¹¹⁷ Aleksii II, *supra* note 41, at 3.

¹¹⁸ Elliott & Deyneka, *supra* note 3.

¹¹⁹ *Matthew* 28:19-20 (RSV). See also *Mark* 16:15-18; *Acts* 1:8, with further discussion in Nichols, *supra* note 6.

¹²⁰ *Matthew* 7:12 (KJV).

B. *Church, State, and Nation*

A related, and deeper, ontological difference is reflected in the Russian Orthodox Church's attitude toward the state. The Russian Orthodox Church has no concept akin to the Western dualistic constructions of church and state—no Augustinian division between the City of God and the City of Man, no medieval Catholic doctrine of two powers or two swords, no Protestant understandings of two kingdoms or two realms, no American understanding of a wall of separation between church and state.¹²¹ In Russian Orthodoxy—as in many parts of the Orthodox world rooted in the ancient Byzantine Empire—church and state are viewed as part of an organic religious and political community, united by blood and by soil.¹²² Throughout Russian history, there was always a “close connection between the Russian people, the *narod*, the nation, on the one hand, and Russian Orthodox Christianity, on the other.”¹²³ At the same time, there was always a veritable “symbiosis of Church and State.”¹²⁴ President Boris Yeltsin captured this belief in his 1998 Christmas Eve message:

For more than 1,000 years the Russian Orthodox Church has fulfilled its sacred mission, affirming spiritual and moral values on Russian soil The Church is an inalienable part of the history and culture of our country and our people. Its selfless activities have deservedly earned [the state's] gratitude and respect.¹²⁵

¹²¹ See RELIGIOUS LIBERTY IN WESTERN THOUGHT (Noel B. Reynolds & W. Cole Durham, Jr. eds., 1996).

¹²² See Stanley S. Harakas, *Orthodox Church-State Theory and American Democracy*, 21 GREEK ORTHODOX THEOLOGICAL REV. 399 (1976); see also generally STEVEN RUNCIMAN, *THE ORTHODOX CHURCHES AND THE SECULAR STATE*; STEVEN RUNCIMAN, *THE BYZANTINE THEOCRACY* (1977).

¹²³ Berman, *supra* note 3.

¹²⁴ Kazemzadeh, *supra* note 2.

¹²⁵ Boris Yeltsin, Christmas Eve Message, January 6, 1998. See also the state-

Historically, this organic unity of church, state, and nation, gave the Russian Orthodox clergy a unique spiritual and moral voice among the Russian people, and unique access to the power and privileges of the Russian state. It allowed the Orthodox clergy to lead Russia in times of great crisis, such as the Napoleonic Wars and World War I. It allowed the Orthodox clergy to teach Russia, through its schools and monasteries, its literature and preaching. It also allowed the Orthodox clergy to nourish and heal Russia through the power and pathos of its liturgy, sacraments, icons, prayers, and music.¹²⁶

But this organic unity also subjected the Russian Orthodox Church to substantial state control over its politics and properties, and substantial restrictions on its religious ministry and prophecy. Particularly during and after the reign of Tsar Peter the Great at the turn of the eighteenth century, the Church was effectively reduced to an “arm of the State, teaching obedience to the government, glorifying absolutism, and serving as spiritual police” of the Russian people. The tripartite formula of “Orthodoxy, Autocracy, and Nationality” was eagerly embraced by tsars and patriarches alike and “became a central element of the Russian official ideology at least until 1905.”¹²⁷

In return for their subservience, the Russian Orthodox clergy could turn to the state to protect them against religious outsiders and competition. A poignant and prescient illustration of this is offered by Joachim, the Patriarch of Moscow at the turn of the eighteenth century. In a 1690 testament, for example, the Patriarch implored co-Tsars

ment of the Russian Orthodox Church’s Council of Bishops meeting in Moscow in March, 1997: “The Russian Orthodox Church has for a thousand years of Russian history formed the spiritual and moral outlook of the Russian people, and that the overwhelming majority of religious believers belong to the Russian Orthodox Church. . . .” Reprinted in 7 (103) PRAVOSLAVNAYA MOSKVA, Mar. 1997, at 12.

¹²⁶ See Harold J. Berman, *The Challenge of Christianity and Democracy in the Soviet Union*, in CHRISTIANITY & DEMOCRACY IN GLOBAL CONTEXT 287, 292 (John Witte, Jr. ed., 1993).

¹²⁷ Kazemzadeh, *supra* note 2.

Ivan and Peter “never to allow any Orthodox Christians in their realm to entertain any close friendly relations with heretics and dissenters—with Latins, Lutherans, Calvinists, and Tatars.” He further urged the tsars to pass a decree “that men of foreign creeds who come here to this pious realm shall under no circumstances preach their religion, disparage our faith in any conversations or introduce their alien customs derived from their heresies for the temptation of Christians.”¹²⁸ “Such was the position of the Muscovite Church at the close of the seventeenth century,” Firuz Kazemzadeh concludes, “and such, in essence, it has remained.”¹²⁹

To be sure, Russia has, since the days of Peter and Joachim, occasionally experimented with Western ideas of liberalism and religious liberty—only to have the state crush these experiments. In the later nineteenth century, for example, Russian elites trained in the West or exposed to Enlightenment literature began pressing for cultural, political, and legal reforms of all kinds. One of the products of this liberal agitation was the Russian Law on Tolerance, signed by the tsar immediately after the 1905 Revolution. The 1905 law gave new rights to Old Believers (who reject the authority of the Moscow Patriarchate) as well as to Christian sects (from within and beyond Russia), to worship, to hold property, to build churches and schools, and to train children in their faith. The 1905 law also gave parties the right to leave the Russian Orthodox Church, even if they were born and baptized in it.¹³⁰ The Bolshevik Revolution of 1917 crushed this experiment. And the Communist Party ultimately outlawed all churches, besides the Russian Orthodox Church, and all religious expression, save Orthodox worship services. Again, in the heady days of Gorbachev’s democratic revolution of the late 1980s, the USSR and Russia in 1990 passed visionary statutes of religious

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ See sources and discussion in Berman, *supra* note 2.

freedom for all. The 1997 law crushes this experiment, again in favor of the Russian Orthodox Church.

We can easily read current developments as the inevitable next act in this Russian drama of church-state relations. For seven centuries, the Russian tsars ruled and protected the Orthodox church—sometimes benignly, occasionally belligerently; often restricting other religions, sometimes tolerating them. For the next seven decades, the Communist Party ruled the Orthodox Church—following the same pattern, albeit more harshly. For the last seven years, a “constitutional government” has ruled the Orthodox Church—again following the same patterns, but now at an accelerated pace. The Russian state has always indulged and occasionally protected the Orthodox Church, in return for the Church’s support and allegiance. The Russian state has always restricted and occasionally quashed non-Orthodox faiths in response to the Church’s needs and requests. In this light, Kazemzadeh concludes, the 1997 law “comes as no surprise.”¹³¹

We can also treat current developments as the birth pangs of a new political and legal order struggling to come forth in Russia. Great revolutions, Harold Berman reminds us, always pass through phases of radicality and retrenchment before settling down.¹³² The 1990 laws reflect the radical phase of this revolution; the 1997 laws reflect the retrenchment phase. Both phases are part of a greater revolutionary soul-searching of Russia for a new vision, indeed a new ontology, along broad Enlightenment lines. The 1917 Bolshevik Revolution had drawn one lesson from the Enlightenment—that of totalitarian fascism. The 1987 Gorbachevian Revolution drew a second lesson from the same Enlightenment—that of “totalitarian democracy.”¹³³

¹³¹ Kazemzadeh, *supra* note 2.

¹³² HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1983); HAROLD J. BERMAN, *JUSTICE IN THE USSR* (1963).

¹³³ See J.L. TALMON, *THE ORIGINS OF TOTALITARIAN DEMOCRACY* (1955).

Neither course has worked in Russia. Ultimately, Russia will settle somewhere between these extremes, or it will direct its collective genius to the creation of a wholly new understanding of church, state, and nation.