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## One New President, One New Patriarch, and a Generous Disregard for the Constitution:

Robert C. Blitt

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# One New President, One New Patriarch, and a Generous Disregard for the Constitution: A Recipe for the Continuing Decline of Secular Russia

Robert C. Blitt\*

## ABSTRACT

*The government of Russia and the Russian Orthodox Church (ROC)—the country's predominant religious group—recently underwent back-to-back changes in each institution's respective leadership. This coincidence of timing affords a unique opportunity to reassess the status of constitutional secularism and church-state relations in the Russian Federation.*

*Following a discussion of the presidential and patriarchal elections that occurred between March 2008 and January 2009, the Article surveys recent developments in Russia as they relate to the nation's constitutional obligations. In the face of this analysis, the Article argues that the government and the ROC alike continue to willfully undermine the constitutional principles of secularism, nondiscrimination, and equality through a variety of special privileges, cooperation agreements, and legislative initiatives. These practices do not merely follow but rather deepen the pattern developed under the leadership of former President Vladimir Putin. The Article concludes that as a consequence of the strengthened church-state relationship, respect for freedom of thought, conscience, and religion or belief,*

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\* Associate Professor of Law, University of Tennessee College of Law. My sincere appreciation is owed to Professor Cole Durham of Brigham Young University, who provided the original impetus for this work in the form of an invitation to participate in a conference in Volgograd, Russian Federation in 2009. Equally, I am grateful to Professor Karla Simon of Catholic University of America for extending the opportunity to present an early draft of this Article at a conference on freedom of religion in the former Soviet Union. This Article would not have materialized without the kind encouragement of Professor Dwight Aarons and the constant support of my colleagues in Knoxville. Finally, thanks are due to Kate Gilchrist and the editors at the Vanderbilt Journal of Transnational Law for their accurate edits and rapid turnaround time in bringing this Article to print.

*as well as freedom of expression will continue to wane, resulting in a further deterioration of the human rights crisis in Russia and of the foundation of Russia's constitutional order.*

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#### I. INTRODUCTION

The government of Russia and the Russian Orthodox Church (ROC)<sup>1</sup>—the country's predominant religious group—recently underwent back-to-back changes in each institution's respective leadership. This coincidence of timing affords an opportunity to take a fresh look at the status of constitutional secularism and church–state relations in the Russian Federation.

After a discussion of the presidential and patriarchal elections that occurred in March 2008 and January 2009 respectively, this

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1. The terms Russian Orthodox Church, ROC, Russian Church, the Church, and Orthodox Church are used interchangeably herein to refer to the Moscow Patriarchate.

Article surveys recent developments in Russia and assesses their impact on the nation's constitutional obligations. Next, the Article argues that both the government and the ROC continue to willfully undermine the constitutional principles of secularism, nondiscrimination, and equality through a variety of special privileges, cooperation agreements, and legislative initiatives. Furthermore, the Article contends that these practices do not merely follow, but rather deepen, the pattern previously developed under the leadership of former President Vladimir Putin.<sup>2</sup> The Article concludes that, as a consequence of the strengthened church–state relationship, respect for freedom of thought, conscience, and religion or belief, and freedom of expression will likely continue to wane, resulting in a further deterioration of the human rights crisis in Russia<sup>3</sup> and of the foundation of Russia's constitutional order.<sup>4</sup>

## II. WINDS OF CHANGE? ELECTIONS FOR PRESIDENT AND PATRIARCH

During Vladimir Putin's two terms as president, most of the informed opinion regarding relations between the Russian government and the ROC agreed that the relationship challenged Russia's official constitutional secularism: the two institutions shared tightened ties<sup>5</sup> and "common values"<sup>6</sup> that signaled a growing "strategic alliance."<sup>7</sup> As a consequence, the ROC grew "increasingly powerful"<sup>8</sup> and "State support for the church [grew] even stronger."<sup>9</sup>

2. See Robert C. Blitt, *How to Entrench a De Facto State Church in Russia*, 2008 BYU L. REV. 707, 736–37.

3. For a general overview of recent human rights developments under Medvedev's presidency, see *Medvedev's First Year: Failure to Improve Human Rights*, AMNESTY INT'L (May 8, 2009), <http://www.amnesty.org/en/news-and-updates/news/medvedevs-first-year-failure-improve-human-rights-20090508>.

4. "Man, his rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the State." KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 2 (Russ.).

5. *A New Patriarch for the Russian Orthodox Church*, U.S. NEWS & WORLD REP., Jan. 28, 2009, <http://www.usnews.com/news/religion/articles/2009/01/28/a-new-patriarch-for-the-russian-orthodox-church.html?PageNr=1>.

6. John Anderson, *Putin and the Russian Orthodox Church: Asymmetric Symphonia?*, 61 J. INT'L AFF. 185, 198 (2007).

7. *Russia—Media Say Church Divided on Choice of Patriarch*, U.S. OPEN SOURCE CTR., Jan. 23, 2009 [hereinafter *Media Say Church Divided*].

8. Tony Halpin, *Russian Orthodox Church Choses [sic] Between 'ex-KGB Candidates' as Patriarch*, TIMES ONLINE (London), Jan. 26, 2009, <http://www.timesonline.co.uk/tol/comment/faith/article5594067.ece>.

9. Oleg Shchedrov, *Putin Promises Support to Russian Orthodox Church*, REUTERS, Nov. 19, 2007, <http://www.reuters.com/article/idUSL196077120071119>.

Furthermore, the ROC enjoyed a “favoured status,”<sup>10</sup> “edg[ing] ever closer to [the] state,”<sup>11</sup> and “in many areas . . . turned . . . into a de facto official religion.”<sup>12</sup> From the perspective of other observers, the church–state relationship morphed into an “unholy alliance”<sup>13</sup> whereby the ROC increasingly became “a symbol and projection of Russian nationalism”<sup>14</sup> and “an extension of the state,”<sup>15</sup> subordinate to “the Putin regime. . . as an even stronger supporter of dictatorship and anti-Western ideology.”<sup>16</sup>

This situation continued until March 2008, when presidential candidate Dmitry Medvedev scored an “overwhelming victory” in an election described as “more coronation than contest.”<sup>17</sup> At this point, preliminary signs indicated that Medvedev would continue President Putin’s relationship with the Church.<sup>18</sup> Although many viewed the presidential election as an example of “managed democracy,” whereby Russia’s electorate merely validated a choice already predetermined by the Kremlin,<sup>19</sup> no one could have predicted that Alexy II, leader of the Russian Orthodox Church since his appointment in 1990, would die less than one year later<sup>20</sup> and leave the position of Patriarch an open race.<sup>21</sup>

Upon learning of the Patriarch’s passing, Medvedev, abroad in India and only seven months into his presidency, canceled a planned

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10. Zoe Knox, *The Symphonic Ideal: The Moscow Patriarchate’s Post-Soviet Leadership*, 55 EUR.–ASIA STUD. 575, 575 (2003).

11. *Russian Orthodox Church Edges Ever Closer to State*, SOUTHEAST MISSOURIAN, Jan. 22, 2000, at 4-B.

12. Clifford J. Levy, *At Expense of All Others, Putin Picks a Church*, N.Y. TIMES, Apr. 24, 2008, at A1; see also Lawrence Uzzell, *Advancing Freedom of Belief in Russia*, in THE FUTURE OF FREEDOM IN RUSSIA 165, 167 (William J. Vanden Heuvel ed., 2000) (dispelling the notion of overt religious persecution in modern Russia, but embracing the depiction of a repressive Russian religious state).

13. Adrian Blomfield, *Orthodox Church Unholy Alliance with Putin*, TELEGRAPH (London), Feb. 23, 2008, <http://www.telegraph.co.uk/news/worldnews/1579638/Orthodox-Church-unholy-alliance-with-Putin.html>.

14. Yuri Zarakhovich, *Putin’s Reunited Russian Church*, TIME, May 17, 2007, available at <http://www.time.com/time/world/article/0,8599,1622544,00.html>.

15. Dmitri Trenin, *Russia Reborn: Reimagining Moscow’s Foreign Policy*, 88 FOREIGN AFF. 64, 75 (2009).

16. David Satter, *Putin Runs the Russian State—And the Russian Church Too*, FORBES, Feb. 20, 2009, [http://www.forbes.com/2009/02/20/putin-solzhenitsyn-kirill-russia-opinions-contributors\\_orthodox\\_church.html](http://www.forbes.com/2009/02/20/putin-solzhenitsyn-kirill-russia-opinions-contributors_orthodox_church.html).

17. Peter Finn, *Putin’s Chosen Successor, Medvedev, Elected in Russia*, WASH. POST, Mar. 3, 2008, at A11.

18. Blitt, *supra* note 2, at 773–78.

19. See Fred Weir, *Russian Election: Medvedev Set to Become President in Sunday Vote*, CHRISTIAN SCI. MONITOR, Feb. 29, 2008, at 4.

20. Tony Halpin, *Patriarch Alexy II, Head of Russian Orthodox Church, Dies*, TIMES ONLINE, Dec. 6, 2008, <http://www.timesonline.co.uk/tol/news/world/europe/article5291723.ece>.

21. See Yuri Zarakhovich, *Russian Orthodox Church Loses Its Leader*, TIME, Dec. 5, 2008, available at <http://www.time.com/time/world/article/0,8599,1864769,00.html>.

visit to Italy and returned forthwith to Russia.<sup>22</sup> A statement released by the Kremlin expressed the President's feelings: "A very grievous event has happened in the life of this country, our society—Patriarch of Moscow and All Russia Alexiy II has died."<sup>23</sup> Medvedev declared Alexy's funeral a day of national mourning.<sup>24</sup> He also signed a decree requiring cultural institutions and television and radio stations to "cancel entertainment events and programs on the day of the patriarch's burial."<sup>25</sup> Finally, Medvedev ordered national media to provide live coverage of the almost eight-hour long funeral ceremony,<sup>26</sup> including "people bidding farewell to the patriarch."<sup>27</sup>

At Alexy's funeral service—attended by Medvedev, Putin, and other officials from the Kremlin and Duma—Metropolitan Kirill of Smolensk and Kaliningrad—the ROC's locum tenens (interim leader) eulogized the departed Patriarch: "Today his Holiness, standing before the face of God, can say that he left us with a different Church: no longer powerless and weak."<sup>28</sup> Press accounts concluded that the ceremony confirmed "the elevation of the Russian Orthodox Church to de-facto state religion."<sup>29</sup> After Alexy's burial, the Church Council turned to the task of electing a new patriarch. This demanding process, during which potential candidates customarily forgo declaring their interest in the post, requires a preliminary selection of three candidates, followed by a vote by a 750-member body consisting of clergy and lay people.<sup>30</sup> Despite his high-profile position as locum tenens, Kirill was, by many accounts, not a shoo-in for the revered post.<sup>31</sup> Numerous observers claimed that the Kremlin favored Metropolitan Kliment, "the standard-bearer of traditionalists" as

22. Sophia Kishkovsky, *Patriarch Aleksy II, Russian Orthodox Leader, Dies at Age 79*, N.Y. TIMES, Dec. 5, 2008, at A19.

23. Halpin, *supra* note 20.

24. Sophia Kishkovsky, *Russian Leaders Attend Patriarch's Funeral*, N.Y. TIMES, Dec. 10, 2008, at A16.

25. *Media Say Church Divided*, *supra* note 7; see also Yulia Taratuta & Pavel Korobov, *Russian Church to Elect New Patriarch*, KOMMERSANT (Moscow), Dec. 8, 2008, at 1 (discussing Alexy's political legacy).

26. Alexander Osipovich, *Russia Buries First Post-Communist Church Leader*, AFP, Dec. 10, 2008.

27. *Media Say Church Divided*, *supra* note 7.

28. *Russian Orthodox Patriarch Alexy II Laid to Rest*, RIA NOVOSTI (Moscow), Dec. 9, 2008, <http://en.rian.ru/russia/20081209/118772112.html>.

29. *E.g.*, Osipovich, *supra* note 26.

30. *Media Say Church Divided*, *supra* note 7. Less than half of the individuals who voted on the new Patriarch were citizens of the Russian Federation. Archpriest Vsevolod Chaplin, now director of the Moscow Patriarchate's External Affairs Department, observed, "citizens of the Russian Federation will certainly form less than half [of the delegates] as far as it is now possible to calculate." Paul Goble, *Will Foreigners Elect the Next Russian Patriarch?*, RADIO FREE EUR./RADIO LIBERTY (Jan. 15, 2009), [http://www.rferl.org/content/Will\\_Foreigners\\_Elect\\_Next\\_Russian\\_Patriarch/1370089.html](http://www.rferl.org/content/Will_Foreigners_Elect_Next_Russian_Patriarch/1370089.html).

31. *E.g.*, Halpin, *supra* note 8.

more “willing to be subservient” to the government’s interests.<sup>32</sup> According to this view, a victory for Kliment would signal the Church “tightly follow[ing] the Kremlin line” and ensure continuation of “the church’s friendship with the state . . . with its previous force.”<sup>33</sup> Indeed, as President, Putin passed over Kirill and instead appointed Kliment to Russia’s Public Chamber,<sup>34</sup> an advisory body to the President that consists of representatives from Russian civil society. In a similar slight at Medvedev’s inauguration in the Kremlin’s Andreyevsky Hall, “Metropolitan Kliment sat in the front row next to Alexy while Metropolitan Kirill was relegated to the back.”<sup>35</sup>

As the inevitable but subtle electioneering and requisite controversies among various factions of the Church unfolded, Kirill asserted his opposition “to any church reforms,” in an effort to counter critics who alleged he was too liberal.<sup>36</sup> Ultimately, the Metropolitan, whether because of his high profile as a TV personality or as locum tenens, vanquished Kliment, securing election as the 16th Patriarch of Moscow and All Russia.<sup>37</sup> To cement the vote, on February 1, 2009, Russian President Dmitry Medvedev and Prime Minister Vladimir Putin (standing prominently near the front),<sup>38</sup> alongside other government officials waited with bated breath in Moscow’s Christ the Savior Cathedral as bells chimed for fifteen minutes before Kirill arrived in a limousine for his enthronement ceremony.<sup>39</sup> Like Alexy’s funeral, Russian television provided live coverage of the ceremony.<sup>40</sup> Although Putin did not give a speech, he and other dignitaries lined up to congratulate the new Patriarch and

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32. *Id.*

33. *Media Say Church Divided*, *supra* note 7 (quoting coverage from several news outlets) (internal quotation marks omitted).

34. *Id.*

35. Nabi Abdullaev, *Two Names Top List to Lead Church*, ST. PETERSBURG TIMES, Dec. 9, 2008, available at [http://www.sptimes.ru/index.php?action\\_id=2&story\\_id=27789](http://www.sptimes.ru/index.php?action_id=2&story_id=27789). However, this is not to say Kirill is entirely without his own backing in the Russian capital. See Irina Filatova, *The Politicking Patriarch*, GUARDIAN (London), Feb. 2, 2009, <http://www.guardian.co.uk/commentisfree/belief/2009/feb/02/russia-religion-patriarch-orthodox-kirill> (discussing Kirill’s close ties with Russian political, intelligence, and business interests).

36. *Media Say Church Divided*, *supra* note 7 (quoting Metropolitan Kirill) (internal quotation marks omitted).

37. Filatova, *supra* note 35. Kirill won 508 votes out of 702. *Id.*

38. Sophia Kishkovsky, *Russian Leaders Attend Installation of Orthodox Patriarch*, N.Y. TIMES, Feb. 2, 2009, at A8.

39. *Russian Orthodox Church Enthrones New Patriarch*, RADIO FREE EUR./RADIO LIBERTY (Feb. 1, 2009), [http://www.rferl.org/Content/Russian\\_Orthodox\\_Church\\_Enthrones\\_New\\_Patriarch/1377392.html](http://www.rferl.org/Content/Russian_Orthodox_Church_Enthrones_New_Patriarch/1377392.html).

40. *Id.*

kissed Kirill's crucifix.<sup>41</sup> Svetlana Medvedeva, Russia's First Lady, was first in line to receive communion from Kirill.<sup>42</sup>

In a speech delivered after his enthronement, Patriarch Kirill offered thanks to Putin and Medvedev.<sup>43</sup> President Medvedev declared the enthronement

an outstanding event in the life of our country and of all Orthodox nations—an event that opens a new chapter in the development of Orthodox religion in our country, and which, hopefully, creates new conditions for a fully-fledged and solidarity dialogue between the Russian Orthodox Church and the state.<sup>44</sup>

A day later, as if to demonstrate his commitment to fostering these “new conditions,” Medvedev invited the newly enthroned Patriarch—as “his first duty as head of the Russian Orthodox Church”<sup>45</sup>—to lead a service in the Kremlin's Assumption Cathedral.<sup>46</sup> After the service, at a reception in Georgy Hall for ROC Local Council delegates, both Kirill and Medvedev addressed the assembled religious leaders.<sup>47</sup> Medvedev's speech stressed that

relations between church and state are built on the foundation of the constitutional principles of freedom of conscience and worship and non-intervention by the state authorities in religious organisations' activities, and at the same time, on the state authorities' recognition of the Church's great contribution to building Russia's statehood, developing its national culture and affirming spiritual and moral values in society.<sup>48</sup>

Although Medvedev acknowledged that the Constitution provides for freedom of conscience and separation of religious associations from the state, he conspicuously omitted mention of Article 14's affirmation that the “Russian Federation shall be a secular state” and religious associations “shall be equal before the

41. *Russian Orthodox Church Enthrones New Patriarch*, AFP, Jan 31, 2009.

42. Leonid Sevastyanov & Robert Moynihan, *100 Days of Patriarch Kirill*, MOSCOW TIMES, May 18, 2009, available at [http://rbth.ru/articles/2009/05/26/260509\\_100days.html](http://rbth.ru/articles/2009/05/26/260509_100days.html).

43. *Russian Orthodox Church Enthrones New Patriarch*, *supra* note 41.

44. *Medvedev: Kirill's Enthronement Creates New Setting for Broader Dialogue Between Church and State*, INTERFAX (Moscow), Feb. 1, 2009, <http://www.interfax-religion.com/?act=news&div=5635> [hereinafter *Dialogue Between Church and State*].

45. *Kirill Conducts First Duty as Patriarch*, RT, Feb. 2, 2009, [http://rt.com/Top\\_News/2009-02-02/Kirill\\_conducts\\_first\\_duty\\_as\\_Patriarch.html](http://rt.com/Top_News/2009-02-02/Kirill_conducts_first_duty_as_Patriarch.html). Georgy Hall is the “largest and most ceremonial hall of the Great Kremlin Palace.” *The Great Kremlin Palace*, PRESIDENT OF RUSS. OFFICIAL WEB PORTAL, <http://archive.kremlin.ru/eng/articles/atributesEng10.shtml> (last visited Oct. 15, 2010).

46. *Dialogue Between Church and State*, *supra* note 44.

47. *Russian Orthodox Church Enthrones New Patriarch*, *supra* note 41.

48. President Dmitry Medvedev, Speech at a Reception Given by the President of Russia in Honour of Senior Clergy Who Took Part in the Russian Orthodox Church Local Council (Feb. 2, 2009), available at [http://archive.kremlin.ru/eng/speeches/2009/02/02/1738\\_type84779type127286\\_212\\_375.shtml](http://archive.kremlin.ru/eng/speeches/2009/02/02/1738_type84779type127286_212_375.shtml).

law.”<sup>49</sup> In essence, Medvedev’s myopic and selective pronouncement on church–state relations cast aside constitutional principles in favor of the malleable mortar of “the Church’s great contribution to building Russia’s statehood”—a contribution that has no basis or authority in operative Russian law.

Faced with the death of one patriarch and the election of another during his first year in office, President Medvedev missed two major opportunities to take steps to redefine the controversial church–state relationship charted during Putin’s previous two terms. Rather than begin to remedy the profound infidelity to Russia’s constitutional touchstone of secular rule, Medvedev appeared poised to follow the status quo. Putin’s puppet or not,<sup>50</sup> Medvedev’s governance of church–state relations since Kirill’s enthronement has further weakened Russia’s Constitution and widened the chasm between constitutional promise and practice. As a result, this chasm appears virtually unbridgeable today.

### III. DOMESTIC DEVELOPMENTS UNDER MEDVEDEV IMPACTING RUSSIA’S CHURCH–STATE RELATIONSHIP

The first half of Medvedev’s presidential term provides ample illustration of the persistence of Putin’s disregard for secular rule and religious equality under the law. Although some incidents might strike the casual observer as quaint or innocuous, others pose grave challenges to constitutional principles. Moreover, taken in toto, these incidents and policies—quaint and grave alike—underscore that the burgeoning relationship between Orthodoxy and the state effectively displaces secular rule and forecloses the possibility of all religious groups benefitting from the promise of nondiscrimination.

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49. KONST. RF art. 14.

50. This is a debate that seems to waiver depending on who and when you ask. See, e.g., Charles Clover, *Russia: Shift to the Shadows*, FIN. TIMES, Dec. 17, 2009, at 8; Clifford Levy, *Russia’s Power (and Strictly Platonic) Couple*, N.Y. TIMES, Apr. 26, 2010, at A12; Tom Parfitt, *Putin and Medvedev Factions Locked in Kremlin Financial Power Struggle*, GUARDIAN, Mar. 3, 2009, at 15; *Who’s the Boss Now?*, NEWSWEEK, May 15, 2009, available at <http://www.newsweek.com/2009/05/14/who-s-the-boss-now.html>; Gleb Bryanski, *Russia’s Putin Steals Medvedev’s Show with Energy*, REUTERS, June 18, 2010, <http://in.reuters.com/article/idINIndia-49417920100618>; Henry Meyer, *Putin, Medvedev Diverge as Protégé Shows He Isn’t a Puppet*, BLOOMBERG, July 31, 2008, <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a3e.h8RHxsyw>; Simon Tisdall, *Medvedev’s New Dawn is a Distant Prospect*, GUARDIAN, June 24, 2010, <http://www.guardian.co.uk/commentisfree/2010/jun/24/medvedev-modernisation-belarus-gas-dispute>; *Medvedev or Putin: Who Holds Real Power in Russia?*, VOANEWS.COM, Oct. 16, 2008, <http://www.voanews.com/english/news/a-13-2008-10-16-voa24-66600722.html>.

### A. *Small Favors for a Friend: A Constitutional Crisis?*

#### 1. The Patriarch's Flashing Blue Lights

One overt, if superficial, sign of the special status afforded to the ROC is the flashing light (*migalki*) affixed to the Patriarch's automobile. Under a 2006 government decree, fewer than one thousand Russian cars, which belong to senior officials, are supposed to be equipped with special flashing lights intended to facilitate navigation through traffic when "absolutely necessary."<sup>51</sup> However, reports suggest that "the real figure is likely to be several times higher as officials work the system, ordering several sirens for each car,"<sup>52</sup> and businessmen "bribe traffic police to obtain the coveted flashing light."<sup>53</sup>

Patriarch Kirill is the only religious leader, even among the representatives of Russia's so-called traditional religions, to enjoy the privilege of a blue flashing light.<sup>54</sup> Moreover, despite a recent backlash against the *migalki* and some talk—in part due to traffic fatalities—of restricting their use, Yuri Luzhkov, the recently dismissed Mayor of Moscow,<sup>55</sup> has asserted that only three people should be allowed to use the blue light: "the President, the Prime Minister, and the patriarch of the Orthodox Church."<sup>56</sup>

51. Alexander Bratersky, *Angry Drivers Take Stand Against Flashing Blue Lights*, MOSCOW TIMES, Apr. 6, 2010, available at <http://www.themoscowtimes.com/mobile/news/article/403336.html>.

52. *Russia Mulls Ban on Private Cars Using Sirens and Flashing Lights*, TELEGRAPH, Apr. 21, 2010, <http://www.telegraph.co.uk/news/worldnews/europe/russia/7612684/Russia-mulls-ban-on-private-cars-using-sirens-and-flashing-lights.html>.

53. Shaun Walker, *Flashing Light Traffic Dodge Leaves Moscow's Motorists Screaming Blue Murder*, INDEPENDENT (London), Apr. 21, 2010, at 30; see also Ruslan Krivobok, *Russian Drivers Protest Cars with Flashing Lights Breaking Road Rules*, RIA NOVOSTI, Apr. 15, 2010, <http://en.rian.ru/russia/20100415/158590009.html> ("The real number of special car signals exceeds the one that was established by the government . . . [O]fficials get the additional lights from the traffic police or local administration.")

54. Bratersky, *supra* note 51. For more on the division between "traditional" and "nontraditional" religions in Russia, see Blitt, *supra* note 2, at 731–35; Wallace L. Daniel & Christopher Marsh, *Russia's 1997 Law on Freedom of Conscience in Context and Retrospect*, 49 J. CHURCH & ST. 5 (2007); 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 (1999).

55. Matthew Chance, *Q&A: Sacked Moscow Mayor Yuri Luzhkov*, CNN, Oct. 7, 2010, <http://www.cnn.com/2010/WORLD/europe/10/07/russia.moscow.mayor/index.html>

56. Walker, *supra* note 53, at 30; Krivobok, *supra* note 53. Mayor Luzhkov is no stranger to blurring the bright line between church and state: as co-chairman of Boris Yeltsin's reelection campaign, he approved the use of billboards around Moscow that featured images of himself and Yeltsin "shaking hands against the glittering gold and white backdrop of the Kremlin's Ioann Lestivichnik church and belfry." Alessandra Stanley, *Church Leans Toward Yeltsin in Russian Vote*, N.Y. TIMES, May 30, 1996, at

## 2. Pay Your Earthly Debt, or You're Going Straight to Hell

Flashing lights may be particularly handy for the Patriarch in the context of a recent agreement struck between the state and the Moscow Patriarchate. Confronted by the global financial crisis, Russia's Federal Court Marshals Service signed a deal with the Church whereby ROC priests nationwide will denounce the failure to repay debts, including "men dodging their alimony payments,"<sup>57</sup> in sermons and during private meetings with debtors organized by court marshals.<sup>58</sup> Russia's Chief Bailiff, Artur Parfenchikov, observed that the ROC "will exercise spiritual influence over the debtors to teach them about the unacceptability of living in debt."<sup>59</sup> According to another spokesperson for the Marshals, "[p]riests will say that unpaid debt is the same as theft in Christianity."<sup>60</sup> This is not the first time the ROC has mixed sermonizing with public policy. In December 2008, priests preached to unsuspecting scofflaws flagged down by traffic police,<sup>61</sup> despite the fact that Article 4(4) of Russia's 1997 Law on Freedom of Conscience—passed at the behest of the ROC—mandates 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.<sup>62</sup>

Despite the government's apparent inability to recall the operative effect of this provision when using the priesthood to reinforce the state's debt collectors and traffic cops, it has an easier time granting

A5. Luzhkov also "recognized the political capital to be gained" by supporting the rebuilding of Moscow's Cathedral of Christ the Savior. Blitt, *supra* note 2, at 725.

57. *Russian Orthodox Priests to Help 'Shame' Debtors*, AFP, June 24, 2009.

58. Natalya Krainova, *Church Calls on Debtors to Repay or Face Hell*, ST. PETERSBURG TIMES, June 26, 2009, available at [http://www.sptimes.ru/index.php?action\\_id=2&story\\_id=29343](http://www.sptimes.ru/index.php?action_id=2&story_id=29343). The Moscow Patriarchate's department on cooperation with military forces and law enforcement agencies brokered the deal. *Id.*

59. *Russian Orthodox Priests to Help 'Shame' Debtors*, *supra* note 57.

60. Krainova, *supra* note 58. Reports indicate that the Marshals are in talks to sign similar agreements with Muslim and Buddhist religious leaders as well. *Id.*

61. *Priests, Cops Fight Traffic Violation*, AFP, Dec. 4, 2008 <http://smh.drive.com.au/motor-news/priests-cops-fight-traffic-violation-20081204-14638.html>.

62. O Svobode Sovesti i o Religioznikh Objedinenijah [On the Freedom of Conscience and Religious Associations], art. 4(4), SOBRANIE ZAKONODATEL'STVA ROSSIJSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1997, No. 39, Item 4465 (Federal Law No. 125-FZ) [hereinafter 1997 Law].

binding effect to the law's preamble, which sets up a distinction between "traditional" and "nontraditional" religious groups.<sup>63</sup>

### 3. A Nice Place Overlooking the Sea . . . on Protected State Land

When the Patriarch—flashing blue lights and all—needs to escape Moscow's temporal but vexing traffic jams, he too needs a *dacha* getaway. Construction of a new summer residence near the Black Sea resort city of Gelendzhik commenced during Alexy's tenure, following a land grant from the mayor of the village. A German travel guide, *The Russian Black Sea Coast: On the Road Between Sochi and Anapa*, describes this up-market and idyllic location:

The hills running alongside the sea are covered by a [unique] forest, to which the surrounding area owes its fantastic air. This forest is a protected nature reserve. The new Russian elite therefore has already begun to take possession of the area. The Patriarch of the Russian church maintains [in absence mostly] a guesthouse on the coast between Divnomorskoe and Dzanchot and President Putin has similar plans to do the same.<sup>64</sup>

In 2003, local residents discovered that the land granted to the ROC was situated on forestland protected under Russia's 2001 Land Code.<sup>65</sup> According to Article 101 of the Land Code, removing protected status for such plots "is permitted only in exceptional cases."<sup>66</sup> These exceptional cases, specified under the Code, are limited to situations where the state or municipality is implementing "international commitments of the Russian Federation," or acting for a purpose of "state or local significance in the absence of other options."<sup>67</sup>

It is not immediately obvious how the transfer of protected land to the Church might fulfill the narrow requirements stipulated under

63. See *id.* For a discussion on the implications of this distinction, see *infra* Part III.B.

64. ANDREAS STERNFELDT & BODO THÖNS, *DIE RUSSISCHE SCHWARZMEERKÜSTE ENTDECKEN: UNTERWEGS ZWISCHEN SOTSCHI UND ANAPA* (Detlev von Oppeln ed., 2005).

65. Yevgeniy Titov, *K Путину в плавках [To Putin in Swimwear]*, NOVAYA GAZETA (Moscow), July 1, 2009, available at <http://www.novayagazeta.ru/data/2009/069/01.html>.

66. Земельни Кодекс РОССИЙСКОЙ ФЕДЕРАЦИИ [ЗК] [Land Code] art. 101(3) (Russ.) (repealed 2006) ("Изъятие земель, занятых лесами первой группы, для государственных или муниципальных нужд допускается только в исключительных случаях, предусмотренных подпунктами 1 и 2 пункта 1 статьи 49 настоящего Кодекса").

67. *Id.* art. 49(1) ("Изъятие, в том числе путем выкупа, земельных участков для государственных или муниципальных нужд осуществляется в исключительных случаях, связанных с: [1] выполнением международных обязательств Российской Федерации; [2] размещением объектов государственного или муниципального значения при отсутствии других вариантов возможного размещения этих объектов.").

the law. However, even putting aside that question, the local government went one step further by granting the transfer to the ROC at no cost, rather than by sale or public auction. At least one individual present at a town hall meeting protested the fact that the Patriarch's residence was proceeding without any environmental impact study: "We are present at a farce. Everything has already been put up, so what are we discussing? And how could a three story building appear without an ecological expert test?"<sup>68</sup> Despite these issues, the local prosecutor's office maintained that "there was no violation" of the applicable law.<sup>69</sup>

#### 4. Flashing Lights and a Land Grant Do Not a State Church Make

One reaction to the developments outlined above may be: "So what? Flashing lights and a land grant do not establish a state church or even pose a challenge to the principle of secularism." From this perspective, any benefits—even those handed out exclusively to the ROC—are more quaint than illustrative of a breakdown in Russia's constitutional principles of secularism and equality for all religions. However, the reality is more complicated and troubling. In practice, these examples demonstrate a consistent and pervasive pattern of special treatment for the ROC, carried over and enlarged under Medvedev's rule. In addition, each instance carries potentially negative implications for upholding respect for Russia's Constitution. For example, flashing lights for the Patriarch's car are problematic not only as discriminatory against other religions, but also as an erosion of the government's separation from religious associations.

It is even more troubling to consider what consequences might follow from blending the coercive force of the state (embodied in the traffic cop or court bailiff) with the Orthodox priesthood. The agent of a specific religious denomination walking in lockstep with an agent of the state in the course of carrying out state functions presents a clear challenge to the constitutional obligation of secularism, but it also forces a citizen—whether nonbeliever, Protestant, Catholic, or Mormon—into an uncomfortable situation in which a specific religious point of view appears to be sanctioned by the governing authority. Russia's Constitution specifically guarantees that "[n]obody shall be forced to express his thoughts and convictions or to deny them."<sup>70</sup> However, if an Orthodox priest, with a police officer standing at his side, hurls Orthodox doctrine at a driver for running an amber light, the driver could foreseeably be placed in such a position. Moreover, simply duplicating the practice with Buddhist

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68. Titov, *supra* note 65.

69. *Id.*

70. KONST. RF art. 29(3).

monks or Muslim imams does nothing to relieve this burden on freedom from coercion or to correct the ensuing inequality and government endorsement of one or more select religions. The issues arising from the land transfer for a summer residence likewise raise red flags concerning preferential treatment, the flaunting of constitutional and federal law, and a blurring of the requisite line between church and state.

It is important to recall that these incidents represent the “lighter” side of the Russian government’s preference for the ROC. The following subpart attempts to address some of the more fundamental flaws with Medvedev’s approach to managing church–state relations and the more ominous indications that Russia is slipping further afield from its constitutional secularism.

### B. Bigger “Favors” Signal Bigger Problems

The pattern of favoring the ROC does little to bolster confidence in the Medvedev government’s ability to safeguard separation of church and state in Russia. In fact, the government’s approach represents a further deepening of the special benefits and treatment bestowed on the ROC by Putin during his two terms as President. As Nikolai Mitrokhin observed, “Kirill has already received more from Medvedev than [Patriarch Alexy II] got from Putin during his whole presidency.”<sup>71</sup> In Patriarch Kirill’s mind, these benefits—akin to the prior practice of government institutions adopting patron saints and official prayers, and building churches within state owned structures<sup>72</sup>—are indicative of legitimate “partnership” and “fruitful cooperation”<sup>73</sup> between the government and the Church. Notably, according to Kirill, the “absence of such agreements with certain other religious organizations active in Russia is not evidence of discrimination.”<sup>74</sup>

Still, even as Mitrokhin concludes that the ROC has made further inroads under Medvedev, he contends that Kirill’s influence reaches “over a very narrow sphere—education, culture,

71. Brian Whitmore, *Russia’s Patriarch Increasingly Becoming Major Force in Politics*, RADIO FREE EUR./RADIO LIBERTY (Sep. 6, 2009), [http://www.rferl.org/content/Russias\\_Patriarch\\_Increasingly\\_Becoming\\_Major\\_Force\\_In\\_Politics/1815832.html](http://www.rferl.org/content/Russias_Patriarch_Increasingly_Becoming_Major_Force_In_Politics/1815832.html).

72. Blitt, *supra* note 2, at 740–41.

73. Sophia Kishkovsky, *Russian Orthodox Church Elects Outspoken Patriarch*, N.Y. TIMES, Jan. 27, 2009, at A10. Medvedev has also invoked the benefits of “fruitful cooperation” between state and church. *Id.* “President Dmitry A. Medvedev sent a greeting, which was read out by his chief of staff, Sergei Naryshkin: ‘I am confident that [Kirill’s election as Patriarch] will encourage fruitful cooperation between the Russian Orthodox Church and the state.’” *Id.*

74. Letter from Metropolitan Kirill of Smolensk and Kaliningrad, to Condoleezza Rice, U.S. Sec’y of State (Dec. 6, 2005) [hereinafter Letter from Kirill], available at <http://orthodoxeurope.org/page/14/80.aspx#5>.

spirituality—but not more than this.”<sup>75</sup> Irina Papkova, writing only two years ago, similarly concluded that the ROC is

unable to exercise real social or political influence . . . at least where it concerns the federal plane of Russian life . . . the patriarchate has been unable to persuade the federal government to implement any of its legislative or policy proposals; the latest spectacular failure in this regard has been the attempt to obtain federal approval for the introduction of Orthodox education in public schools.<sup>76</sup>

Kirill himself has expressed revulsion at the slightest implication that the ROC might enjoy anything approaching the status of an official church. Writing in 2005 to then U.S. Secretary of State Condoleezza Rice, Kirill demurred that there “are absolutely no grounds” to make such an assertion because ROC “clergy do not participate in the work of the state organs or political parties and movements,” and the Church operates without state funding of religious activity.<sup>77</sup>

Despite these arguments downplaying the extent of the ROC’s influence on Russian policy, the evidence presented below indicates that it is no longer tenable to profess that the clergy do not participate in the work of the state organs or that the Church operates without state funding.<sup>78</sup> Furthermore, these examples make the case that the Church increasingly is wielding its influence beyond the confines of Mitrokhin’s narrow sphere (which already challenges Russia’s constitutional order) to successfully advance its legislative and policy vision. To prove this point, the next subpart examines three major developments under the Medvedev–Kirill partnership: the role of religion in Russia’s military; the role of religion in Russia’s public education system; and the decision by United Russia, the dominant political party, to authorize ROC review of all pending federal legislation.

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75. Whitmore, *supra* note 71.

76. Irina Papkova, *The Orthodox Church and Civil Society in Russia, and: Russian Society and the Orthodox Church: Religion in Russia after Communism, and: Russkaia pravoslavnaia tserkov': Sovremennoe sostoianie i aktual'nye problemy [The Russian Orthodox Church: Contemporary Condition and Current Problems]*, 9 KRITIKA: EXPLORATIONS IN RUSSIAN AND EURASIAN HISTORY 481, 483, 485 (2008).

77. Letter from Kirill, *supra* note 74.

78. Arguing that the Church operates without state funding “of religious activities” is disingenuous from the outset because government grants for nonreligious activities free the Church to redirect its own internal funds towards religious activities. See *Russian Religious Organizations Likely to Gain Right for State Help*, INTERFAX, Feb. 17, 2010, <http://www.interfax-religion.com/?act=news&div=6945> [hereinafter *Right for State Help*] (“The amendments aim at stimulating charitable activities of religious organizations. Having them adopted, parishes of the Russian Church would be able to get money allocated by the government for prevention of abortions and support of young families on priority basis, it would be easier for them to get premises. . .”).

To understand the extent of the ROC's growing political muscularity, Metropolitan Hilarion Alfeyev's open-ended vision of "noninterference" in the context of church–state relations is instructive:

And this is what we call noninterference: We on our side do not interfere . . . into concrete political affairs. Which does not mean that the Church does not express views on various political and social issues. On the contrary, the Church is free to explore not only purely theological or moral themes, but also themes related to history, related to present political situations, [and] to the future. And this is what I call noninterference.<sup>79</sup>

Hilarion's assessment is also in keeping with the nonexhaustive list of areas in which the ROC cooperates with the government under its Bases of the Social Concept text.<sup>80</sup> According to this official Church document, "dialogue [is permitted] 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"; in addition, cooperation is permitted "in some other areas if it contributes to the fulfillment of the [Church's] tasks."<sup>81</sup> In contrast to the wide-open playing field of sixteen enumerated but broad areas where the ROC affirmatively permits itself to cooperate with the government, it only forecloses cooperation in three areas: "a) political struggle, election agitation, campaigns in support of particular political parties and public and political leaders; b) waging civil war or aggressive external war; [and] c) direct participation in intelligence and any other activity that demands secrecy by law even in making one's confession or reporting to the church authorities."<sup>82</sup> The Church's success in policing its noncooperation in these latter three areas is debatable at best, particularly in light of Patriarch Alexy's not-too-tacit endorsement of candidate Medvedev as Putin's handpicked successor during the 2008

79. *Russian Archbishop Describes Limits of Noninterference in Church–State Ties*, RIA NOVOSTI (Sept. 18, 2009), <http://en.rian.ru/valdai/20090918/156176475.html>. Hilarion replaced Kirill as head of the Moscow Patriarchate's external relations department following Kirill's election to Patriarch. *Chairman of the Moscow Patriarchate Department for External Church Relations—Metropolitan Hilarion of Volokolamsk*, RUSSIAN ORTHODOX CHURCH: OFFICIAL WEB SITE OF THE DEPT' FOR EXTERNAL CHURCH REL., <http://www.mospat.ru/en/decr-chairman/> (last visited Oct. 15, 2010).

80. See Russian Orthodox Church, *The Bases of the Social Concept*, RUSSIAN ORTHODOX CHURCH: OFFICIAL WEB SITE OF THE DEPT' FOR EXTERNAL CHURCH REL., <http://www.mospat.ru/en/documents/social-concepts/> (last visited Oct. 15, 2010) [hereinafter *Bases of the Social Concept*].

81. *Id.* art. III.8.

82. *Id.*

presidential election<sup>83</sup> and the Church's virtual endorsement of Russia's military campaign in Chechnya.<sup>84</sup>

### 1. The Burgeoning Military–Orthodox Complex

Full military honors, including a brass band, greeted Patriarch Kirill on his visit to Russia's largest shipyard, in Severodvinsk.<sup>85</sup> After strolling past a row of sailors in dress uniform, Kirill boarded a nuclear submarine and presented the crew with an icon of the Mother of God.<sup>86</sup> Later, during his address to the shipyard workers, Kirill proclaimed that Orthodox Christian values should be used to reinforce Russia's defense capabilities: "You should not be ashamed of going to church and teaching the Orthodox faith to your children. . . . Then we shall have something to defend with our missiles."<sup>87</sup> On an earlier visit to Russian sailors stationed in Sevastopol, the headquarters for Russia's Black Sea Fleet, Kirill stressed the need to offer spiritual support to the military: "For warriors to be capable of [sacrificing their lives], we must support them with our prayers, while clergymen should be working with the armed forces."<sup>88</sup>

In another ceremony held at the Strategic Missile Forces Academy in Moscow, Patriarch Kirill presented Lieutenant General Andrey Shvaichenko, Commander of the Missile Forces, with a banner emblazoned with the image of the Holy Great Martyr Barbara.<sup>89</sup> Kirill opined that "such dangerous weapon [sic] can be given only to clean hands—hands of people with clear mind, ardent love to Motherland, responsibility for their work before God and people."<sup>90</sup> According to Kirill, the Strategic Missile Forces (SMF) was the first branch of Russia's military to undertake systematic

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83. Sophia Kishkovsky, *Russia's Religious Leaders Congratulate Putin Heir Medvedev*, ECUMENICAL NEWS INT'L, Mar. 6, 2008, <http://www.eni.ch/featured/article.php?id=1710>. On election day in 2008, before a gaggle of journalists, microphones, and video cameras, Alexy expressed his wish that the next president "continue the course carried out" by President Putin. *Id.*

84. Blitt, *supra* note 2, at 726. The World Council of Churches (WCC) and the Conference of European Churches (CEC) publicly criticized the ROC's position in this conflict. Edmund Doogue, *As Moscow Continues Attacks Churches Speak Out for Chechen Civilians*, CHRISTIANITY TODAY, Nov. 1, 1999, <http://www.christianitytoday.com/ct/1999/novemberweb-only/14.0c.html>.

85. Whitmore, *supra* note 71.

86. *Id.*

87. *Id.*

88. Roger McDermott, *Medvedev "Sanctifies" the Russian Army*, EURASIA DAILY MONITOR, Aug. 17, 2009, available at [http://www.worldsecuritynetwork.com/showArticle3.cfm?article\\_id=17894](http://www.worldsecuritynetwork.com/showArticle3.cfm?article_id=17894).

89. *Patriarch Kirill Awarded Strategic Missile Forces to St. Barbara Pennant*, INTERFAX, Dec. 8, 2009, <http://www.interfax-religion.com/?act=news&div=6718>.

90. *Id.*

cooperation with the ROC because of the SMF's strategic importance to the nation's defense.<sup>91</sup> The Patriarch also reminded the audience that the Church had been teaching Orthodox culture at the Academy for thirteen years and that over 1,600 officers and members of their families had graduated from that program.<sup>92</sup>

These episodes, with their heady mix of military hardware and Orthodox pageantry, further complicate the entanglement of church and state. According to Putin's vision, "traditional faiths" and Russia's nuclear missile shield represented the twin "components that strengthen Russian statehood and create necessary preconditions for internal and external security of the country."<sup>93</sup> Thus, under Putin, practices including the blessing of the President's nuclear launch code briefcase<sup>94</sup> and the sprinkling of holy water by a ROC priest on a S-400 Triumph surface-to-air missile system during a ceremony broadcast on national television<sup>95</sup> became commonplace, ostensibly to strengthen statehood and state security. Remarkably, despite the Church's vehement objection to "consecrat[ing] places that can serve a 'double purpose' and establishments directly or indirectly encouraging sin,"<sup>96</sup> no high-level ROC priest has objected to sanctifying weapons of mass destruction<sup>97</sup> or the successor agency to the KGB, the institution responsible for single-handedly defiling and laying waste to the Church under Soviet rule.<sup>98</sup> Moreover, neither the government nor the ROC has expressed any reservation over the constitutionality of their ongoing comingling within the military realm.

By mid-2009—and thanks in part to the situation described above—another longstanding effort by the ROC to further embed itself within the military appeared to bear fruit. During a meeting with religious and government officials, Medvedev announced his intention to support on "an ongoing basis the work of chaplains from

91. *Id.*

92. *Id.*

93. Zarakovich, *supra* note 14; Fred Weir, *Russia's Orthodox Church Regains Lost Ground*, CHRISTIAN SCI. MONITOR, Nov. 14, 2007, at 6.

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

95. Andrew Higgins, *Putin and Orthodox Church Cement Power in Russia*, WALL ST. J., Dec. 18, 2007, at A1.

96. *Patriarch Kirill Believes It Unacceptable to Consecrate Nightclubs and Restaurants*, INTERFAX, Dec. 23, 2009, <http://www.interfax-religion.com/?act=news&div=6770>. For Kirill, places that can serve a "double purpose" appear limited to "night clubs, discos, restaurants, [and] shops selling dubious production." *Id.*

97. For example, when asked whether he thought it was inappropriate for the Church to bless "all kinds of weapons," Kirill replied, "[p]riests do that when they are asked." *Interview with Russian Orthodox Metropolitan Kyrill [sic]: 'The Bible Calls it a Sin,' SPIEGEL ONLINE INT'L*, Jan. 10, 2008, <http://www.spiegel.de/international/world/0,1518,527618-2,00.html>.

98. Blitt, *supra* note 2, at 713–15.

our traditional Russian faiths in our Armed Forces.”<sup>99</sup> This sea change in policy—pursued by the ROC during the eight years of Putin’s rule but never officially attained<sup>100</sup>—signals a dramatic deepening of church–state cooperation under the new President. The Church’s fervor for accessing the military is in part fueled by stories such as one told by Vsevolod Chaplin, now head of the ROC’s department for church–society relations:

Metropolitan Kirill and me [sic] once were visiting the Presidential Administration. We disputed over teaching religion in school. Several officials started persuading us that it was absolutely premature, because “people were not ready and would not understand it.” As usual the disputes were continued in the hall. Two men of a military poise were passing by. They listened out to our talk. Suddenly one of them said: I am sorry, maybe it’s none of our business . . . But all our officers think the law of the Lord should be taught, and that is all! What are we discussing all these years?<sup>101</sup>

In Medvedev’s view, the new chaplaincy program is intended to “help strengthen the moral and spiritual foundations of [Russian] society,” as well its “multiethnic and multireligious” unity.<sup>102</sup> However, some critics of the program have voiced concern that the ROC is better situated than other “traditional” faiths to capitalize on state-sanctioned access to the military, in part because of its existing missionary posture<sup>103</sup> and “nationwide infrastructure of seminaries

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99. President Dmitry Medvedev, Opening Remarks at Meeting on Teaching the Fundamentals of Religious Culture and Secular Ethics in Schools, and the Introduction of a Chaplains Institute in the Armed Forces (July 21, 2009) [hereinafter Medvedev Opening Remarks], available at [http://archive.kremlin.ru/eng/text/speeches/2009/07/21/1141\\_type84779\\_220010.shtml](http://archive.kremlin.ru/eng/text/speeches/2009/07/21/1141_type84779_220010.shtml).

100. Even prior to Medvedev’s formal approval of military chaplains, over 2,000 Orthodox priests ministered to soldiers on a voluntary, unofficial basis. Blitt, *supra* note 2, at 741. This allowed for a situation whereby “[o]nly the Orthodox clergy [were] entitled to give ecclesiastic guidance to the military.” Zarakhovich, *supra* note 14; see also Anastasiya Lebedev, *Schools Told to Give Orthodox Lessons*, MOSCOW TIMES, Aug. 31, 2006 (acknowledging that “Orthodox priests already preach informally in many units” of the Russian military); Igor Plugatarev, *The Church and the Priest in the Army Are More Important than Food and Drink*, DEF. & SEC. (Rus.), Dec. 30, 2009 (estimating that before the chaplaincy agreement, “530 temples on the territories of the military units of the Defense Ministry” already housed “850 permanent priests”).

101. Vsevolod Chaplin, “*Scraps*,” INTERFAX, Nov. 21, 2006, <http://www.interfax-religion.com/?act=mosaic&div=18>.

102. Medvedev Opening Remarks, *supra* note 99.

103. The Moscow Patriarchate has a standalone department that deals uniquely with the Russian military and law enforcement. See Krainova, *supra* note 58 (mentioning the “Moscow Patriarchate’s department on cooperation with military forces and law enforcement agencies”). For a recent, if combative, interview with the head of this department, Archpriest Dmitry Smirnov, see Plugatarev, *supra* note 100. “The period between 1990 and 2000 gave [the] ROC enough strength and power to allow her [to] undertake wide-spread social activity . . . . The Missionary Department of ROC was established in end-1995 [sic] and the Russian Orthodox church initiated a new stage in missionary practice and missionary theology.” Valentin Kozhuharov, *Mission in an Orthodox Christian Context: Witnessing Christ as Pastoral Responsibility 2*

and colleges to train priests for such work,” something the Muslim, Jewish, and Buddhist faiths do not share.<sup>104</sup> This head start has in turn prompted concern that members of the military who adhere to other faiths will either go without spiritual care or be led to Orthodoxy as a more accessible alternative.<sup>105</sup>

Even if the three other “traditional” religious groups manage to train and field their own chaplains, the state is poised to reject their admission into the military. The terms governing the chaplaincy program require adherents of a “traditional” religious faith to account for 10 percent of a military unit before the state will authorize an official chaplain.<sup>106</sup> According to a recent Russian Defense Ministry survey, 83 percent of soldiers identifying themselves as religious adherents are Orthodox.<sup>107</sup> Based on this official government statistic, it appears unlikely that any of the “traditional” religious minorities will be able to satisfy the 10 percent per unit bar with any regularity.<sup>108</sup>

In addition to being criticized as “laden with errors and insulting remarks against . . . religious associations that do not belong to the . . . four ‘traditional’ religions,”<sup>109</sup> the military’s data on

(Mar. 22, 2009) (unpublished manuscript), <http://www.edinburgh2010.org/fileadmin/files/edinburgh2010/files/pdf/Valentin%20Kozhuharov%202009-4-30.pdf>; see also, Valentin Kozhuharov, *Theological Reflections on the Missionary Activity of the Russian Orthodox Church*, 95 INT’L REV. OF MISSION 371, 376 (2006).

104. Robert Parsons, *Russia: Muslims Oppose Bill to Add Chaplains to Army*, RADIO FREE EUR./RADIO LIBERTY (Mar. 17, 2006), <http://www.rferl.org/content/article/1066820.html>. Islam and Judaism do not maintain a “priesthood” as such. Paul Goble, *Muslim Faithful Outnumber Orthodox Believers in Russian Military District*, WORLD SEC. NETWORK (Feb. 19, 2010), [http://www.worldsecuritynetwork.com/showArticle3.cfm?article\\_id=18214](http://www.worldsecuritynetwork.com/showArticle3.cfm?article_id=18214).

105. See *Training Centers to Prepare Priests for Russian Army*, RIA NOVOSTI, Feb. 2, 2010, <http://en.rian.ru/russia/20100202/157755055.html> (reporting that 83 percent of servicemen identify as Orthodox Christians, and noting Medvedev’s support for “a project to restore full-scale military priesthood”); Goble, *supra* note 104 (discussing the possibility that the percentage of Orthodox Christian servicemen is significantly lower than what the government reports).

106. U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANNUAL REPORT 2010, at 276 (2010), <http://www.uscirf.gov/images/annual%20report%202010.pdf>.

107. *Id.* “The Armed Forces Sociological Center says more than 70% of Russia’s military personnel consider themselves religious. About 80% of them identify themselves as Orthodox Christians, about 13% as Muslims, about 3% as Buddhists, and 4% as followers of other faiths.” *Orthodox Church to Appoint 400 Priests as Military Chaplains*, INTERFAX, INTERFAX, Feb. 3, 2010, <http://www.interfax-religion.com/?act=news&div=6891>.

108. According to one critic, “Most likely, everybody, other than Russian Orthodox parishioners, will be having a problem. I doubt even the Muslims will number the required 10%.” Anatoly Pchelintsev, *Religious Strife May Hit the Army*, DEF. & SEC. (Rus.), Feb. 3, 2010.

109. Open Letter from the Slavic Center for Law & Justice and the Institute of Religion & Law, to the Minister of Defense [hereinafter Open Letter from the Slavic Center for Law & Justice], available at [http://www.sclj.org/resources/10\\_0217-LettertoMOD.htm](http://www.sclj.org/resources/10_0217-LettertoMOD.htm).

religiosity appears to conflict with a very different picture being painted by several media sources. According to these reports, Muslim citizens of Russia are predicted to “make up a majority of Russia’s conscript army” in the near future,<sup>110</sup> in part “because an ever-increasing fraction of the country’s 18 year olds is drawn from historically Muslim nationalities.”<sup>111</sup> This trend is partially attributed to the “continuous demographic decline” suffered by Russia’s non-Muslim population since 1995.<sup>112</sup> Indeed, the Russian military itself has conceded that in at least one area—the Volga–Ural Military District—the majority of troops are in fact Muslim.<sup>113</sup>

Against this backdrop, the 10 percent hurdle endorsed by Medvedev coincidentally marries well with the ROC’s desire to retain a monopoly—or at least a very tightly guarded oligopoly—over access to the Russian military. As early as 1995, the Moscow Patriarchate told military officials that if its access to the armed services could not be exclusive, only Muslim clerics should be tolerated, and no other religions should be permitted to “penetrate” fighting units.<sup>114</sup>

Patriarch Kirill, a longstanding advocate of inserting Orthodox clergy into Russia’s military, was quick to praise Medvedev’s plan to admit clergy into the ranks of the military. Shortly after the President’s historic proclamation, Defense Minister Anatoly Serdyukov announced that he would “hire up to 250 clerics and would pay their salaries.”<sup>115</sup> By December 2009, thirty ROC priests were already selected, and some dispatched, to serve at Russian military bases, including in the North Caucasus.<sup>116</sup> According to Deputy Defense Minister Nikolai Pankov, the military anticipates integrating

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110. Michael Mainville, *Russia Has a Muslim Dilemma: Ethnic Russians Hostile to Muslims*, S.F. CHRON., Nov. 19, 2006, at A17; see also Rozan Yunos & Bandar Seri Begawan, *Russia 20% Muslim by 2020*, BRUNEI TIMES, July 27, 2007, available at [http://www.bt.com.bn/features/2007/07/27/russia\\_20\\_muslim\\_by\\_2020](http://www.bt.com.bn/features/2007/07/27/russia_20_muslim_by_2020) (noting that by 2020, Muslims may make up one-fifth of Russia’s population).

111. Goble, *supra* note 104.

112. See Nicholas Eberstadt, *Drunken Nation: Russia’s Depopulation Bomb*, 171 WORLD AFF. 51, 53 (2009) (noting that if demographic projections for Russia made by the UN Population Division and U.S. Bureau of the Census “turn out to be relatively accurate . . . the Russian Federation will have experienced over thirty years of continuous demographic decline by 2025”).

113. *Volga–Urals Military District Has More Muslims than Orthodox*, INTERFAX, Feb. 9, 2010, <http://www.interfax-religion.com/?act=news&div=6914>.

114. ZOE KNOX, RUSSIAN SOCIETY AND THE ORTHODOX CHURCH: RELIGION IN RUSSIA AFTER COMMUNISM 125 (2005).

115. Nabi Abdullaev, *Medvedev Backs More Religion in Class, Army*, MOSCOW TIMES, July 22, 2009, available at <http://www.themoscowtimes.com/news/article/medvedev-backs-more-religion-in-class-army/379721.html>; see also *Orthodoxy and Other Faiths to Be Taught in Russian Schools Voluntarily*, ITAR-TASS (Moscow), July 22, 2009 (noting events and policies that may lead to greater religious discrimination).

116. *Russia Restores Full-Scale Military Priesthood*, RIA NOVOSTI, Dec. 8, 2009, <http://rianovosti.com/Religion/20091208/157158959.html>.

chaplains into all regions and military districts by the end of 2010.<sup>117</sup> The state, therefore, is now paying the ROC directly for its religious activities, and the ROC's priests, in turn, have become agents of the state.<sup>118</sup>

Much of the development of the chaplain system is taking place by administrative decree, outside formal legislative channels. This procedure has given rise to concerns over the implementation of the framework that will govern rights and obligations of clergy, their responsibilities, and their competences.<sup>119</sup> As of January 2010, the Russian Parliament is reportedly "preparing a special law on the priesthood in the armed forces."<sup>120</sup> For its part, the Church reportedly is preparing "a textbook of Orthodox Christian culture for conscript servicemen" and is developing methods for counteracting the "penetration of totalitarian sects, especially neo-pagans, to the army."<sup>121</sup>

Putting aside the 10 percent rule for "traditional" faiths and the methods used to implement the program, the most troubling aspect of the military chaplain program stems from its confirmation that the preambulatory distinction between "traditional" and "nontraditional" faiths contained in the 1997 Law on Freedom of Conscience has become the law of the land.<sup>122</sup> As a consequence of this distortion, the President is able to freely divide religious groups into three distinct tiers, with each assigned a varying degree of privilege or lack thereof: first, the Russian Orthodox Church; second, the other "traditional" faiths, which are afforded the opportunity to operate with the blessing of the government, at least on paper; and finally, the so-called nontraditional faiths, which are saddled with government-sanctioned barriers of discrimination that obstruct the ability to practice faith and service communities freely and equally. By giving legal effect to the distinction between "traditional" and "nontraditional" religious groups under Russia's plan for military

117. *Russia and CIS News Summary for Wednesday*, ITAR-TASS, Feb. 18, 2010.

118. To underscore the increasingly common phenomenon of state funding of the ROC's activities, plans are underway to authorize government funding for ROC parishes engaged in efforts to prevent abortions and "support . . . young families on a priority basis." *Right for State Help*, *supra* note 78.

119. In February 2010, the government approved the Statute on the Functional Responsibilities of the Assistant Commander of the Military Unit for Working with Faithful Soldiers in the Armed Forces of the Russian Federation. Open Letter from the Slavic Center for Law & Justice, *supra* note 109.

120. Sergey Borisov, *ROAR: "The Best of the Best" to Serve as Chaplains in Russian Army*, RT, Jan. 6, 2010, <http://rt.com/Politics/2010-01-06/russian-army-chaplains-press.html>.

121. Igor Yegorov, *Priests Will Be Drafted into the Russian Army?*, DEF. & SEC., Feb. 3, 2010.

122. For additional discussion on the impact of the 1997 Law on Freedom of Conscience, see Blitt, *supra* note 2, at 733–34. See also *infra* Part III.B (discussing implications of distinction between "traditional" and "nontraditional faiths").

chaplains, the program facially discriminates against certain religions without anything more than a preambulatory reference as the basis for establishing such a distinction in the first instance. As currently implemented, the program goes beyond what President Putin permitted<sup>123</sup> and stands starkly at odds with the Constitution's guarantees of equality, nondiscrimination, and freedom of religion.

## 2. On Religion in Schools

During his address announcing the military chaplain program, Medvedev also endorsed another long-debated hot-button issue: teaching the fundamentals of religious culture and secular ethics in Russia's schools.<sup>124</sup> The ROC has for many years advocated introducing such a course, as an opportunity to infuse the state's educational curriculum with traditional Orthodox values.<sup>125</sup> In the official view of the Church,

it is desirable that the entire educational system should be built on religious principles and based on Christian values. . . . The danger of occult and neo-heathen influences and destructive sects penetrating into the secular school should not be ignored either, as under their impact a child can be lost for himself, for his family and for society.<sup>126</sup>

In vowing to allow religious instruction in public schools, Medvedev stated that the new educational program would adhere to "fundamental constitutional provisions at every stage."<sup>127</sup> However, implementation of the program is being driven by input from the representatives of only designated traditional religions, thus omitting from the outset all other so-called nontraditional faiths.<sup>128</sup> Moreover, Medvedev's promise that "every legislative act in this area will have to be appraised by experts"<sup>129</sup> offers little assurance for compliance with constitutional or human rights norms because Russia's record is, at best, mixed when it comes to employing "experts" to reach "objective" decisions. For example, in February 2009, the Justice

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123. By virtue of being formalized and approved under Medvedev, the chaplaincy program goes beyond anything Putin authorized. *See, e.g.*, Blitt, *supra* note 2, at 733–34 (noting Putin's comments that the law does not give special privileges to the ROC).

124. Medvedev Opening Remarks, *supra* note 99.

125. *See generally* Perry L. Glanzer & Konstantin Petrenko, *Religion and Education in Post-Communist Russia: Russia's Evolving Church–State Relations*, 49 J. CHURCH & ST. 53 (2007) (providing a detailed historical account of religious education in post-Soviet Russia).

126. *Bases of the Social Concept*, *supra* note 80, art. 14(3).

127. Medvedev Opening Remarks, *supra* note 99.

128. *Id.*

129. *Id.*

Ministry established an Expert Religious Studies Council.<sup>130</sup> The U.S. Commission on International Religious Freedom (USCIRF) reported that this Council has “wide powers to recommend investigations of religious groups during the registration procedure, to assess if a registered community’s activity is in accord with its charter, and to ascertain if an organization, one of its members, or the literature it produces or distributes is extremist.”<sup>131</sup> Yet, the Council is chaired by Aleksandr Dvorkin, an individual who lacks academic credentials as a religion specialist and is known as “Russia’s most prominent ‘anti-cult’ activist.”<sup>132</sup> Other members of the Council include five ROC-affiliated individuals known for their “anti-sect” activities and attacks on the Protestant faith.<sup>133</sup>

Only implementation of the new curriculum will reveal to what extent—if at all—the ROC exercises control over content, the degree to which students are able to avail themselves of any “secular ethics” component, and whether or not exemptions and other accommodations are forthcoming for nonbelievers or adherents to “nontraditional” faiths.<sup>134</sup> However, like its counterpart plan for establishing a military chaplaincy—and based on the current

130. Geraldine Fagan, *Russia: Notorious “Anti-Cultists” on New “Inquisition,”* FORUM 18 (Nor.), May 27, 2009, [http://www.forum18.org/Archive.php?article\\_id=1300](http://www.forum18.org/Archive.php?article_id=1300).

131. U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, *supra* note 106, at 279.

132. *Id.* During one radio interview, Dvorkin asserted that the “tiny, totalitarian Church of Scientology was the government religion of the United States.” *Id.*

133. *Id.*; U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANNUAL REPORT 2009, at 181–82 (2009), <http://www.uscirf.gov/images/AR2009/russia.pdf>. Julie Elkner attributes much of the “responsibility for the increasing religious tensions” during the early 1990s to the anti-cult movement and to “leading anti-cult crusader” Dvorkin specifically:

Dvorkin has been the key agitator responsible for popularising the new term ‘totalitarian sects,’ thereby furnishing the would-be defenders of Russia’s spiritual security with one of their chief bugbears. . . . The term was soon picked up by the Moscow Patriarchate of the Orthodox Church, some representatives of the Roman Catholic Church and several Protestant Churches, and the media, as a convenient and suitably sensationalist and emotive—even ‘politically correct’—catch-all term for the multitude of new religious movements, many of them foreign, that had become active in Russia.

Julie Elkner, *Constructing the Chekist: The Cult of State Security in Soviet and Post-Soviet Russia* 259–60 (2009) (unpublished Ph.D. dissertation, Kings College, University of Cambridge) (on file with the author).

134. If the new program mirrors past experiences, infringements of individual human rights and Russia’s Constitution seem likely. *See, e.g.,* Anastasiya Lebedev, *Lesson in Nativity Cards and the Constitution*, MOSCOW TIMES, Sept. 25, 2006 (discussing debate among religious leaders about religion in schools); Svetlana Osadchuk, *Schoolboy Takes Unorthodox Stand*, MOSCOW TIMES, Nov. 13, 2007 (reporting physical assault by students on another student who refused to take part in church services); Geraldine Fagan, *Patchy Local Provision of Orthodox Culture Classes*, FORUM 18, Sept. 25, 2007, [http://www.forum18.org/Archive.php?article\\_id=1022](http://www.forum18.org/Archive.php?article_id=1022) (reporting physical assault by students on a school boy who refused to cross himself before prayer led by an ROC priest).

discourse and track record of previous efforts such as the “Foundations of the Orthodox Culture” course<sup>135</sup>—the shape of this program seems fated to exclude religious faiths deemed nontraditional<sup>136</sup> and thus create another fault line of inequality and discrimination for religious minorities and nonbelievers. The program also seems poised to challenge conventional science, including evolution. According to Metropolitan Hilarion, “[t]he time has come for the monopoly of Darwinism and the deceptive idea that science in general contradicts religion. These ideas should be left in the past. . . . Darwin’s theory remains a theory. This means it should be taught to children as one of several theories, but children should know of other theories too.”<sup>137</sup> Moreover, the ROC continues to advocate that all students—regardless of religious persuasion—be exposed to the specifics of “Orthodox culture” in some standalone framework: “the rising generation of citizens cannot fail to have basic notions of . . . icon painting, church architecture, and the historical path of the Orthodox Church.”<sup>138</sup>

In the face of looming changes to Russia’s public school curriculum—religion classes might be expanded nationwide as early as 2012<sup>139</sup>—it is worth recalling that the jurisprudence of the European Court of Human Rights (ECtHR) already establishes that all governments must “take care that information or knowledge included in [any religious instruction sponsored by the state] is conveyed in an objective, critical and pluralistic manner.” The ECtHR further prohibits the state from “pursu[ing] an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions.”<sup>140</sup> This bar may be even

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135. See, e.g., Fagan, *supra* note 134 (discussing opposition to implementation of the “Foundations of the Orthodox Culture” course).

136. Cf. Mansur Mirovalev, *Russian Pupils to Have Choice of Religion, Ethics Classes*, BOSTON GLOBE, July 21, 2009, at 4 (noting that students may choose between studying Russian Orthodoxy, Islam, Buddhism, or Judaism). Of course, even then, those non-ROC “traditional” religions may be subject to a 10 percent bar or some other device that renders an outcome similar to that emerging with the military chaplaincy plan.

137. Conor Humphries, *Russia Church Wants End to Darwin School “Monopoly,”* REUTERS, June 10, 2010, <http://in.reuters.com/article/idINTRE6584JX20100609>.

138. Патриарх Московский и всея Руси Кирилл – “Известиям”: “Церковная жизнь должна быть служением” [*Patriarch of Moscow and All Russia, Kirill to Izvestiya: “Church Life Should Be Service”*], IZVESTIYA (Moscow), May 12, 2009 [hereinafter *Patriarch Kirill to Izvestiya*] (“[S]imilar knowledge about the country’s other traditional religions can be included in history and social studies courses.” (quoting Patriarch Kirill) (internal quotation marks omitted)).

139. Mirovalev, *supra* note 136, at 4.

140. Kjeldsen, Busk Madsen & Pedersen v. Denmark, App. Nos. 5095/71, 5920/72, 5926/72, 1 Eur. H.R. Rep. 737, ¶ 53 (1976). Human Rights Comm., Views of the Human Rights Committee Under the Optional Protocol to the International Covenant on Civil and Political Rights, ¶ 14.3, U.N. Doc. CCPR/C/82/D/1155/2003 (Nov. 23, 2004) (showing that the UN Human Rights Committee (HRC) addressed the same

higher when applied to Russia given that the ECtHR's jurisprudence on this issue relates to Norway, a country with an official state church; Russia, in contrast, remains—at least on paper—constitutionally secular.<sup>141</sup>

The agreement to allow religious instruction in public schools for “traditional” religions also is troubling because it dovetails with another church–state alliance aimed at combating the “falsification of history.”<sup>142</sup> In May 2009, Medvedev announced the formation of a presidential commission to “Counter Attempts to Falsify History to the Detriment of Russia's Interests.”<sup>143</sup> The *raison d'être* for the commission is explained by Presidential Chief of Staff and Commission Chair Sergei Naryshkin:

Russia, as historic successor of the Soviet Union, is provocatively blamed for events and tragedies of those years, which prepares a base for making claims against our country: political, financial and territorial. At the enemies' order, attempts are being made to distort events and facts of other periods in the development of the Russian state.<sup>144</sup>

According to others, the commission is part of a more sinister effort to introduce an official version of history, backed by the threat of criminal sanction for those who diverge from the government's view.<sup>145</sup> Supporting this perspective is the fact that the twenty-eight-member commission consists of “Kremlin-friendly conservatives”<sup>146</sup>—

issue three years prior to the European Court). The HRC found that Norway's religious curriculum could not “be said to meet the requirement of being delivered in a neutral and objective way” unless it maintained a system of exemptions that was neutral and objective. *Id.* The HRC concluded that requiring parents to “acquaint themselves with [a] subject . . . clearly of a religious nature” to secure an exemption was a “considerable burden.” *Id.*

141. Blitt, *supra* note 2, at 767.

142. Dmitry Medvedev Signed an Executive Order on the Presidential Commission of the Russian Federation to Counter Attempts to Falsify History to the Detriment of Russia's Interests, PRESIDENT OF RUSS. OFFICIAL WEB PORTAL (May 19, 2009), <http://archive.kremlin.ru/eng/text/news/2009/05/216503.shtml>.

143. *Id.*; see also Interview by Vitaly Abramov, Editor-in-Chief, Izvestiya (May 7, 2010), available at <http://eng.news.kremlin.ru/news/295> (detailing President Medvedev's personal views on the commission); James Rodgers, *Russia Acts Against 'False' History*, BBC NEWS, July 24, 2009, <http://news.bbc.co.uk/2/hi/europe/8166020.stm> (labeling the new body a “Historical Truth Commission”); *Russia Sets Up Commission to Prevent Falsification of History*, RIA NOVOSTI, May 19, 2009, <http://en.rian.ru/russia/20090519/155041940.html> (providing another account of the commission's purpose).

144. *Commission on Counteracting History Falsification Meets in Kremlin*, ITAR-TASS, Aug. 28, 2009.

145. Irina Filatova, *Medvedev's New Russian Orthodoxy*, GUARDIAN, May 21, 2009, <http://www.guardian.co.uk/commentisfree/2009/may/21/russia-medvedev-history>.

146. Anne Garrels, *Artistic Freedoms Under Fire in Russian Trial*, NAT'L PUB. RADIO (June 4, 2009) (available for download on iTunes).

mostly government officials—and includes only three historians.<sup>147</sup> According to another point of view, “So many people are speaking about strong, Orthodox Russia, military power. . . . The commission is partly a response to this atmosphere.”<sup>148</sup> Indeed, the ROC has gotten behind the government effort to combat “falsification”: shortly after the commission’s establishment, Patriarch Kirill, on a visit to Ukraine, condemned Ukrainian attempts to falsify history, “echoing earlier Kremlin criticism of Ukraine’s campaign to have the Holodomor, a Stalin-era famine that killed millions of Ukrainians, recognized internationally as genocide.”<sup>149</sup> In another speech, Kirill again attacked the supposed falsification of Russian history: “We must counter every lie. It is gratifying that writers, scholars and cultural figures . . . will speak against attempts to falsify [our] history.”<sup>150</sup> At Russia’s third World Congress of Compatriots Living Abroad, a forum established to help preserve and extend “the Russian-speaking space and propagation of the Russian language and culture,”<sup>151</sup> Kirill participated in discussions concerning “attempts to falsify [history] to the prejudice of Russia.”<sup>152</sup> Despite a public but very short-lived dustup over Stalin’s historical legacy,<sup>153</sup> the

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147. Filatova, *supra* note 145; see also *Комиссия по противодействию попыткам фальсификации истории в ущерб интересам России* [Commission to Counter Attempts to Falsify History to the Detriment of Russia], PRESIDENT OF RUSS. OFFICIAL WEB PORTAL (May 19, 2009), <http://archive.kremlin.ru/articles/216485.shtml> (containing a complete list of commissioners).

148. Rodgers, *supra* note 143.

149. Claire Bigg, *Russian Patriarch’s Visit Creates Storm in Ukraine*, RADIO FREE EUR./RADIO LIBERTY (July 31, 2009), [http://www.rferl.org/content/Russian\\_Patriarchs\\_Visit\\_Creates\\_Storm\\_In\\_Ukraine/1789\\_959.html](http://www.rferl.org/content/Russian_Patriarchs_Visit_Creates_Storm_In_Ukraine/1789_959.html); see also *Kremlin Works to Prevent Falsification of History*, VOANEWS.COM, May 19, 2009, <http://www.voanews.com/english/news/a-13-2009-05-19-voa59-68644182.html?refresh=1> (describing the Kremlin’s efforts to suppress historical accounts of World War II depicting Russian efforts unfavorably).

150. *Attempts to Falsify War History Must Be Resisted—Patriarch*, INTERFAX, Sept. 2, 2009, <http://www.interfax-religion.com/?act=news&div=6406>.

151. *Patriarch Kirill Attends the Opening of the 3d Congress of Compatriots Living Abroad*, RUSSIAN ORTHODOX CHURCH: OFFICIAL WEB SITE OF THE DEPT’ EXTERNAL CHURCH REL. (Dec. 1, 2009), <http://www.mospat.ru/en/2009/12/01/news9542/>.

152. *Id.*

153. *A Mission in the World—Interview by Archbishop Hilarion of Volokolamsk to Expert Magazine*, EXPERT MAG. (Moscow), June 15, 2009, available at [http://en.hilarion.orthodoxia.org/7\\_7](http://en.hilarion.orthodoxia.org/7_7).

Stalin was a monster, a spiritual cripple who created a horrible anti-humane system of governance built on lies, violence and terror. He unleashed genocide against his own people . . . . In this respect Stalin is quite like Hitler. Both brought so much grief into this world . . . . There is no essential difference between the Butovo firing ground and Buchenwald, between GULAG and Hitler’s system of death camps.

*Id.*; Sophia Kishkovsky, *Russian Patriarch, Praising World War II, Sidesteps Stalin*, HUFFINGTON POST, May 13, 2010, <http://www.huffingtonpost.com/2010/05/13/russian->

government and Church continue to see eye to eye on the threat of falsification. In June 2010, at a meeting between the ROC and Ministry of Foreign Affairs, the parties stressed plans to continue joint efforts to combat the falsification of history.<sup>154</sup> Such efforts to constrain historical debate based on a government-endorsed narrative may very well spillover into the religious education realm to limit competing viewpoints and perspectives on faith in the name of upholding one religious “truth.”

### 3. Advance Church Scrutiny of All Pending Legislation

To be certain, the pro-ROC policies endorsed above represent significant “concessions from the secular government that [Kirill’s] predecessors had been trying to obtain for years.”<sup>155</sup> However, the single most revealing recent development is the decision by the United Russia Party—the party of Putin and Medvedev<sup>156</sup>—to open all legislation pending in the Duma for comment by the ROC. This decision emerged following a meeting between Patriarch Kirill and two United Russia deputies who were summoned to hear the Church’s concerns over Russia’s decision to proceed with ratification of the European Social Charter.<sup>157</sup> According to Deputy Andrei Isayev, “[United Russia] told the patriarch that the ratification of the charter won’t require any changes in Russian legislature [sic] and

patriarch-praisin\_n\_575634.html (“When some homegrown historians tell us that the evil here was no less than [in Nazi Germany], they are not seeing beyond their own noses, and fail to see the divine horizon beyond their extremely primitive and sinful analysis.” (quoting Patriarch Metropolitan Kirill) (internal quotation marks omitted)).

154. *Состоялось XV заседание Рабочей группы по взаимодействию МИД России и Русской Православной Церкви* [Held XV Meeting of the Working Group on Interaction Russian Foreign Ministry and the Russian Orthodox Church], RUSSIAN ORTHODOX CHURCH (June 4, 2010), <http://www.patriarchia.ru/db/text/1174038.html>.

155. Andrei Zolotov, Jr., *The Tireless Preacher*, RIA NOVOSTI, Feb. 2, 2010, <http://www.armeniandiaspora.com/showthread.php?213870-The-Tireless-Preacher>.

156. United Russia holds 315 of the Duma’s 450 seats. CENTRAL INTELLIGENCE AGENCY [CIA], *Russia*, in THE WORLD FACTBOOK (2010), <https://www.cia.gov/library/publications/the-world-factbook/geos/rs.html>.

157. *Russia Signs European Social Charter of the Council of Europe*, MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FEDERATION (Sept. 9, 2000), <http://www.ln.mid.ru/bl.nsf/5d5fc0348b8b2d26c3256def0051fa20/c57668280f98bc3e4325699c003b6336?OpenDocument>; see also Anna Malpas, *Vow to Europe to Offer Sex Ed Angers Parents*, MOSCOW TIMES, June 11, 2009, available at <http://www.themoscowtimes.com/news/article/vow-to-europe-to-offer-sex-ed-angers-parents/378472.html> (describing a debate weighing morality and sexually transmitted diseases in school curricula); *Public Opinion of Russian Citizens Against Some Points of the European Social Charter*, RUSS.-INFOCENTRE (June 9, 2009), [http://www.russia-ic.com/rus\\_inter\\_national/in\\_depth/920/](http://www.russia-ic.com/rus_inter_national/in_depth/920/) (explaining that the ROC is concerned that ratification of the European Social Charter will require Russia to introduce sex education courses in school and establish a juvenile justice system that takes discipline out of the hands of parents). Patriarch Kirill has labeled sex education “a looming evil.” Malpas, *supra*.

won't lead to circumstances that will frighten the public."<sup>158</sup> At the same time, Isayev offered that in the future his party "would show the patriarchate the State Duma's plan for legislative work and hold preliminary consultations on all questions that may raise doubts to avoid mutual misunderstanding."<sup>159</sup> Boris Nemtsov, a former Deputy Prime Minister and leader of the Solidarity opposition group, criticized the agreement as running afoul of Russia's Constitution: "They can hold discussions with whoever they want, but there is the Constitution, which says the church and government are separate."<sup>160</sup>

This milestone arrangement establishes a seemingly unprecedented and unlimited privilege for the ROC. Moreover, it suggests that the ruling party welcomes an end to official constitutional secularism in Russia. Opening draft legislation to comment from a single religious group vitiates the constitutional principles of secularism and separation of church and state, particularly because no other religious group—"traditional" or "nontraditional"—has been granted the same opportunity as the ROC. More revealingly still, Russia's Public Chamber, an advisory body made up of prominent individuals and created for the express purpose of reviewing draft legislation,<sup>161</sup> has been prevented from performing this task since its establishment in 2005.<sup>162</sup> Indeed,

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158. *Ruling Party Alone at the Top in Russia*, ANGUS REID GLOBAL MONITOR (July 13, 2009), [http://www.angus-reid.com/polls/view/ruling\\_party\\_alone\\_at\\_the\\_top\\_in\\_russia/](http://www.angus-reid.com/polls/view/ruling_party_alone_at_the_top_in_russia/); see also Alexandra Odynova, *Orthodox Church Gets a Say on Duma Bills*, MOSCOW TIMES, July 10, 2009, available at <http://www.themoscowtimes.com/news/article/orthodox-church-gets-a-say-on-duma-bills/379444.html> (discussing Kirill's "angst" over anticipated sex education programs).

159. Odynova, *supra* note 158.

160. *Id.*

161. Об Общественной палате Российской Федерации [On the Public Chamber of the Russian Federation], Федеральный закон Российской Федерации от 4 апреля 2005 г. N 32-ФЗ (Federal Law No. 32-FZ, 4 Apr. 2005) (explaining that the Chamber is intended to harmonize social interests of Russian citizens, *inter alia*, by undertaking a public assessment of draft laws); Alfred B. Evans, Jr., *The First Steps of Russia's Public Chamber Representation or Coordination?* 16 DEMOKRATIZATSIYA 345, 347 (2008); CIVIC CHAMBER FOR THE RUSSIAN FEDERATION, <http://www.oprf.ru/en> (last visited Oct. 15, 2010); Nikolay Petrov, *All Smoke and Mirrors*, MOSCOW TIMES, July 20, 2007, available at <http://www.themoscowtimes.com/opinion/article/all-smoke-and-mirrors/195590.html> (noting that since its establishment, the Public Chamber (or Civic Chamber) has been described as "largely a meaningless institution," "an attempt to create a dummy of a civil society," and "a smoke screen for the Kremlin's increasingly authoritarian trends").

162. See On the Public Chamber of the Russian Federation arts. 6(1), 18(2) (explaining that the President appoints one-third of the Chamber's 126 members and that the Chamber cannot evaluate legislation without the prior authorization of its governing board); U.S. DEP'T OF STATE, 2009 HUMAN RIGHTS REPORT: RUSSIA (2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136054.htm> (noting that following a 2008 law reiterating the Chamber's review function—specifically regarding legislation that restricts individual freedoms—the body still has had no "discernable effect on the legislative process"); James Richter, *The Ministry of Civil Society? The Public Chambers in the Regions*, 56 PROBLEMS OF POST-COMMUNISM 6, 8 (2009).

following announcement of the United Russia–ROC deal, Alexander Brod, a human rights activist and Public Chamber member, argued that the Chamber deserved at least the same privilege as the Church to preview legislation.<sup>163</sup> As part of its response to this newfound responsibility and other similar relationships, the Moscow Patriarchate established a “department for church–state relations,” which interacts with “legislative bodies, political parties, trade unions . . . and other institutes of the [sic] civil society in the canonical territory of the Moscow Patriarchate.”<sup>164</sup>

Subsequent and related acts have further insinuated the Church into the temporal policy making process. In December 2009, the ROC and members of United Russia announced their expectation that the government would not merely consult with the Church, but “must jointly decide . . . what their common values are and what modernization tasks must be accomplished.”<sup>165</sup> This announcement implies that the parties—Church and state—share an equal role in determining the future course of Russian policy, and it reveals not only a newly strengthened Church under the leadership of Patriarch Kirill, but also a more willing governmental partner headed by President Medvedev. From the perspective of the Church, the situation is ideal: its independent authority and decision making capacity are preserved intact, and not co-opted by the government as under a formal, more unified system of state religion. Yet at the same time, the Church is able to assert a significant influence on the policy making process, not only without regard for Russia’s Constitution, but at the expense of all other religious groups in Russia.

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(suggesting that part of the reason for this failure may be that the Public Chamber reflects the Kremlin’s effort to “appropriate the rhetoric of civil society to elicit the civic participation necessary to improve state governance and to construct boundaries around the public sphere to preserve state sovereignty”); see also Evans, *supra* note 161, at 358 (asserting that in light of these realities, the Public Chamber, on the whole, remains an institution either unwilling or unable to effectively scrutinize Kremlin-backed legislative initiatives). A slightly more optimistic, if still tentative, assessment concludes that the Public Chamber “will likely be able to exert influence ‘at the margins’, making some difference in the formulation of policies when the most powerful forces are aligned in such a way as to give the [Chamber] the opportunity to tip the balance a bit one way or another.” Evans, *supra* note 161, at 358; see also *id.* at 355 (showing that even this view reaffirms that the Russian government created the Public Chamber for the purpose of co-opting civil society “to assist the leadership of the political regime in pursuing the objectives that it has chosen for society”).

163. Odynova, *supra* note 158.

164. *Department for External Church Relations of the Moscow Patriarchate (DECR)—Background*, RUSSIAN ORTHODOX CHURCH: OFFICIAL WEB SITE OF THE DEPT’ FOR EXTERNAL CHURCH REL., <http://www.mospat.ru/en/department/history/> (last visited Oct. 15, 2010).

165. *Church, United Russia Want State–Church Partnership Sealed by Laws*, INTERFAX, Dec. 1, 2009.

## IV. CONCLUSION

As one of the first acts to inaugurate the second half of his term, Medvedev signed into law a new public holiday celebrating the Baptism of Rus.<sup>166</sup> This holiday, which takes place on July 28, commemorates Prince Vladimir's baptism of medieval Kievan Rus in 988 and underpins the ROC's ongoing success at adding religious holidays to Russia's civil calendar.<sup>167</sup> The Baptism of Rus is being added to a growing list of state-recognized Orthodox celebrations, including, most recently, the Day of Married Love and Family Happiness, which coincides with the Orthodox commemoration of Peter and Fevronia Day, the Orthodox patron saints of married couples.<sup>168</sup> Medvedev's decision to recognize the Baptism of Rus on Russia's civil calendar sparked demands from the leaders of Russia's Buddhist and Muslim communities for similar public recognition of their own religious holidays. The president of the Islamic Committee of Russia asserted that failure to approve a parallel Muslim holiday "will underscore what Muslims already feel, that they are second-class citizens and marginals." Likewise, Drikung Kag'yü, a representative of Russia's Buddhists reasoned that "justice requires" a Buddhist public holiday in the face of a holiday for Orthodox Christians.<sup>169</sup>

In less than two years, the Medvedev–Kirill partnership has opened multiple new channels of influence for the ROC in Russian social and political life, handed the Church its long-coveted prizes of access to the public education system and the military, and continued to entrench a discriminatory three-tiered status system for religious groups.<sup>170</sup> These growing channels of influence are also evident in Russia's foreign policy, including various initiatives and constitutionally dubious ROC–state interactions that blur the line between Russia's Ministry of Foreign Affairs (MOFA) and the

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166. *A New Memorable Date Has Been Set in Russia's Calendar—Baptism of Rus Day*, PRESIDENT OF RUSS. OFFICIAL WEB PORTAL (June 1, 2010), <http://eng.kremlin.ru/news/326>.

167. Blitt, *supra* note 2, at 742, 743; see also *Patriarch Kirill Hopes Day of Russia's Baptism to Become State Holiday in Russia and Byelorussia*, INTERFAX, July 29, 2009, <http://www.interfax-religion.com/?act=news&div=6261> (noting that the Day of Russia's Baptism, a religious holiday, may soon be added to the civil calendar).

168. *Russia Marks Day of Married Love and Family Happiness*, RIA NOVOSTI, July 8, 2009, <http://en.rian.ru/russia/20090708/155471052.html>.

169. Paul Goble, *Russia's Muslims and Buddhists Want Public Holidays for Their Faiths Too*, EURASIA REV., May 28, 2010, available at <http://www.eurasiareview.com/20100528389/russias-muslims-and-buddhists-want-public-holidays-for-their-faiths-too.html>.

170. This system is premised on distinguishing between Russian Orthodoxy, other "traditional" faiths of Russia (Buddhism, Islam, and Judaism), and so-called nontraditional religions.

ROC.<sup>171</sup> Moreover, the ROC's influence can be seen in the looming decision to transfer property confiscated under communist rule back to religious organizations. Although President Putin refused to take this initiative, with the help of President Medvedev's more accommodating approach, the ROC is poised to become one of Russia's largest property owners.<sup>172</sup>

From this perspective, the recent leadership changes within the Church and the government have resulted in a deepening of the entente established between Putin and Alexy. Rather than proceed with his promise of greater democracy,<sup>173</sup> Medvedev has invited the Church further into the fold. Kirill has not balked at the opportunity. Consequently, these leaders—and in particular the President<sup>174</sup>—have failed in their obligations to afford Russia's Constitution the deference owed to it as the nation's highest law and as required under Article 15(2):

State government bodies, local self-government bodies, officials, citizens and their associations shall be obliged to observe the Constitution of the Russian Federation and laws.<sup>175</sup>

Although the burgeoning relationship with the state comes at the expense of respect for principles enshrined in the constitutional text, Patriarch Kirill considers the current dynamic to be as close as possible—in “our world spoiled by sin”<sup>176</sup>—to the historical Byzantine idea of *symphonia*, under which church and state stand on equal footing, each operating autonomously within its respective sphere of influence.<sup>177</sup>

[W]e now have the opportunity to get as close as possible to [*symphonia*]. Despite all the existing difficulties, the Church today retains, on the one hand, independence, and on the other—friendly

171. Providing an analysis of the influence of the Moscow Patriarchate in Russia's foreign policy is outside the immediate scope of this Article. For more information on the topic, see Robert C. Blitt, *Russia's "Orthodox" Foreign Policy: Church–State Cooperation* (forthcoming) (on file with author).

172. *Law on Church Property Return Bans Transfer of Exhibits from Museums*, RIA NOVOSTI, May 24, 2010, <http://en.rian.ru/russia/20100524/159132306.html>; *Putin Gives Boost to Law on Church Property Return*, RIA NOVOSTI, Jan. 14, 2010, <http://en.rian.ru/russia/20100114/157543576.html>; see also *Orthodox Church May Become One of Largest Proprietors in Russia*, ITAR-TASS, Feb. 24, 2009, available at [http://www.acg.ru/english/orthodox\\_church\\_may\\_become\\_one\\_of\\_largest\\_proprietors\\_in\\_russia](http://www.acg.ru/english/orthodox_church_may_become_one_of_largest_proprietors_in_russia).

173. Shaun Walker, *Medvedev Promises New Era for Russian Democracy*, INDEPENDENT, Nov. 13, 2009, at 27. *Contra* Simon Shuster, *Medvedev Dashes Hopes for More Democracy in Russia*, TIME, Oct. 30, 2009, <http://www.time.com/time/world/article/0,8599,1933251,00.html> (illustrating efforts curtailing democratization).

174. See KONST. RF art. 80 (“[The President] shall be the guarantor of the Constitution of the Russian Federation and of human and civil rights and freedoms.”).

175. *Id.* art. 15(2).

176. *Patriarch Kirill to Izvestiya*, *supra* note 138.

177. Knox, *supra* note 10, 575.

relations with the state. And we should utilize this potential in the most varied spheres.<sup>178</sup>

In Kirill's mind, these "friendly relations" accord fully with the principle of separation of church and state, yet have the advantage of avoiding the Church's submission to the state:

We are not striving to resurrect the role which the Orthodox Church exercised in the Russian empire. . . . [T]he Church's best representatives were aware of how the Church's dependence upon the state, the subjugation of her life to the interests of the state, is so detrimental to the Church's own mission. In this sense, the separation of church and state—regardless of which political system is in effect—is unquestionably favourable to the Church, and we will insist on this fundamental principle . . .<sup>179</sup>

For the ROC, therefore, separation of church and state is a one-way affair. It means that the Church—to the exclusion of all other religious groups<sup>180</sup>—can press its views on the secular government "in the most varied spheres," even to the point of urging policies contrary to the Russia's Constitution. At the same time, the state cannot interfere in the Church's dealings but is urged to interfere with or restrict the freedom of other religious groups.<sup>181</sup>

Ultimately, it matters little whether the degeneration of secularism, separation of state and religion, equality among religious faiths, and nondiscrimination derive from *symphonia* or something less.<sup>182</sup> What matters is that under the current scenario the essence of the unfolding ROC–state dynamic—premised on the creeping infusion of religiosity and discriminatory treatment into official state policy—leaves both parties as willful partners in the ever-worsening collapse of Russia's constitutional order and respect for human rights.

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178. Patriarch Kirill to *Izvestiya*, *supra* note 138.

179. Knox, *supra* note 10, at 580.

180. *Id.* at 582 ("[T]he Patriarchate seeks to cooperate with the state on a remarkably wide range of areas and does not seek to extend this church–state cooperation to other denominations.").

181. 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 Non-Governmental Organizations as Told Through Eleven Russian Proverbs, 40 GEO. WASH. INT'L L. REV. 1, 79 (2008) (noting the ROC's endorsement of cumbersome reporting requirements under Russia's NGO law for "nontraditional" religions).

182. Writing in 2007, John Anderson reasoned that if *symphonia* did exist under Alexy and Putin, it was "very much an asymmetric *symphonia*" favoring the government. Anderson, *supra* note 6, at 198 (emphasis added). He added that the asymmetric *symphonia* "may become more so should Russia elect a less sympathetic president in 2008." *Id.* The findings presented herein indicate that this has not been the case. Rather, under Medvedev's leadership a rebalancing in favor of the Church has occurred.