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Nikolas K. Gvosdev

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Religious Freedom: Russian Constitutional Principles—Historical and Contemporary

*Dr. Nikolas K. Gvosdev**

No constitution exists in a vacuum. Its provisions are constantly being reinterpreted and applied against the backdrop of specific cultures, definitions, and expectations. In the United States, individual choice has become the benchmark by which the validity of decisions is measured. As sociologist Christian Smith, of the University of North Carolina, notes:

For moderns—perhaps especially modern Americans—the ultimate criterion of identity and lifestyle validity is individual choice. It is by choosing a product, a mate, a lifestyle, or an identity that one makes it one’s very own, personal, special, and meaningful—not “merely” something one inherits or assumes.¹

In contrast, constitutional principles in Russia have been interpreted not simply through the prism of the individual, but through the matrix of relationships that create and maintain society. Constitutional scholar V.E. Chirkin observes, “a ‘constitutional right’ regulates the system of foundational ties in the relationships: society—the state—the collective—the individual.”²

The Constitution of the Russian Federation, promulgated in 1993, is a “mixed” document, drawing from the Anglo-American, continental European, and Russian constitutional traditions. As such, it represents a “collision of legal cultures.”³ This is especially true when dealing with issues of religious freedom. Both the Constitution

* Associate Director, J.M. Dawson Institute of Church-State Studies at Baylor University.

1. Richard John Neuhaus, *To Choose and Be Chosen*, FIRST THINGS, Oct. 2000, at 86 (quoting Christian Smith).

2. V.E. CHIRKIN, KONSTITUTIONNOE PRAVO ROSSII 2 (2000).

3. I. Bogdanovskaia, The Constitutional Court of Russia: The Hard Way to the “Rule-of-Law” State, Address presented at the Fifth World Congress of the International Association of Constitutional Law, *Constitutionalism, Universalism, and Democracy*, Rotterdam (July 12–16, 1999).

itself, as well as related legislation, as Alexei Krindatch pointed out, is the result of a

compromise between different approaches to a desirable model of church-state relations in post-Soviet Russia represented by various social forces

[Also,] there was a compromise between the “Western” (or American) vision of the term “religious freedom” . . . and the current Russian social and political realities

. . . .

The combination of the above mentioned factors . . . resulted unfortunately in the eclectic and vague character of the entire law and of its particular articles. This allows for a broad range of legal interpretations from very liberal to very restrictive.⁴

When looking at the question of religious freedom in Russia, therefore, one must not only examine the relevant constitutional provisions, but also the ways in which these provisions are translated in a given cultural and historical context.⁵ This is especially important if there are contradictions or disagreements within the body of the text. One cannot also neglect long-held societal attitudes, especially when such attitudes are reflected in the way constitutional provisions are interpreted and executed by judges and officials.

I. RELIGIOUS FREEDOM AND THE RUSSIAN CONSTITUTION

By the mechanism of a popular referendum, the present Constitution of the Russian Federation was adopted on December 12, 1993, and immediately entered into force. In addition, all “laws and other legislative acts in operation on the territory of the Russian Federation prior to the entry into force of the present Constitution are

4. Alexei Krindatch, *Comment by Alexei Krindatch (April 13, 1988)* (visited Jan. 16, 2001) <<http://www.geocities.com/~iarf/russialaw.html>>. Krindatch is a member of the Russian Academy of Sciences as well as the International Association for Religious Freedom.

5. In August 1997, Patriarch Alexis II of Moscow, the head of the Russian Orthodox Church, made a vehement protest against the forcing of “North American norms” of religious freedom upon Russia, and said that any legislation should take into consideration the “national traditions” of Russia. *Patriarkh Moskovskii i Vseia Rusi Aleksii II Vystupil Protiv Naviazivaniia na Rossii ‘Severoamerikanskikh Norm’ V Voprosakh Svobody Sovesti*, ITAR-TASS PRAVOSLAVIE V ROSSII, (Aug. 28, 1997) (visited May 1, 2001) <<http://www.or.ru>>.

retained to the point that they do not contradict the Constitution of the Russian Federation.”⁶ The current Constitution, therefore, is not bound by any previous fundamental laws or acts and, according to Article 15(1), “possesses the highest juridical power and direct action and is applicable throughout the territory of the Russian Federation. Laws and other legislative acts, adopted in the Russian Federation, should not contradict the Constitution of the Russian Federation.” In addition to elevating the national Constitution to a place of supremacy over all other laws in the Russian Federation, including local and regional legislative acts, Article 15(4) goes on to recognize the priority of international treaties over domestic law, and in the event that a Russian law conflicts with a treaty provision, “the rule of the international agreement shall apply.”⁷

It is important to realize, however, that the Russian Constitution of 1993 does not represent the final apotheosis of constitutional and legal thought in post-Soviet Russia. While it is true that “liberal views, despite numerous shortcomings and ambiguities, nevertheless triumphed in the Russian constitution adopted on 12 December 1993,” Richard Sakwa correctly points out that

[t]he making of constitutions in post-communist countries has often been likened to overhauling a ship in mid-ocean. This somewhat understates the problem: in most other countries at least the destination or purpose is known, whereas in Russia there is no consensus over the type of polity that is to emerge out of the constitutional process. In other words, *there is no agreement over what precisely constitutes an ethical state or sustains the moral attributes of the citizen living in this state.*⁸

This uncertainty is reflected, to some extent, not only in the various articles of the Constitution which touch on religious freedom, but also in the ways in which such articles can be interpreted. Do such clauses translate into “religious freedom,” particularly as that term has been understood by Americans and American constitutional jurisprudence? While a surface reading may lead us to that conclusion, there are differences in interpretation and translation that

6. KONST. RF art. 15 (1993).

7. *Id.* art. 15(4).

8. Richard Sakwa, *The Struggle for the Constitution in Russia and the Triumph of Ethical Individualism*, 48 *STUD. IN E. EUR. THOUGHT* 115, 115 (1996) (emphasis added).

can, in fact, lead to significant limitations being placed on the right of religious freedom to be exercised in contemporary Russia.⁹

The 1993 Russian Constitution directly addresses religious freedom in two contexts. Discussion of religious freedom first appears in Section One, Chapter One, which addresses the constitutional order of the state. Article 14 declares: “1. The Russian Federation is a secular state. No religion may be established in the capacity of a state or mandatory [religion]. 2. Religious associations are separated from the state and equal before the law.”¹⁰

The second reference to religious freedom is in Chapter Two, which deals with individual rights, in Article 28:

To each is guaranteed freedom of conscience, freedom of profession of faith, including the right to profess [or “confess”] individually or in conjunction with others any religion or to profess none, to freely choose, have and spread religious and other beliefs [or convictions] and to act in concert with them.¹¹

Religious freedom is indirectly impacted in two other areas of the Russian Constitution. Article 29(2) prohibits any sort of “propaganda or agitation” based on, among other things, “religious hatred and enmity” and bars propaganda that advocates any sort of superiority of one group over another, including proclaimed superiority on religious grounds.¹² Article 55(3) mandates that human rights may be restricted by federal law in those instances where such action is necessary to “protect the fundamentals of the constitutional order, public morals, health, the rights and the legal interests of other

9. See, e.g., *American Interpretations of Religious Freedom Not Always Global Standard in Determining What Constitutes Religious Freedom*, a press release issued by the J.M. Dawson Institute of Church-State Studies (Baylor University), Sept. 25, 2000 (pointing out that the State Department report assumes that constitutional guarantees which speak about the equality of religious associations are to be understood as mandating equality among all religions).

10. KONST. RF art. 14.

11. *Id.* art. 28. Article 28 of the Russian Constitution is based, to a large extent, on Article 9(1) of the European Convention on Human Rights, which reads: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.” See complete text of the *European Convention on Human Rights* at <<http://conventions.coe.int/treaty/EN/Treaties/html/005.htm>>.

12. KONST. RF 29(2).

persons, to guarantee the defense of the country and the security of the state.”¹³

Taken collectively, these constitutional articles do not amount to a clear-cut guarantee of “religious freedom” in the American understanding of the term. That is to say, there is no explicit provision that guarantees that religions as corporate institutions have an automatic right to exist in society, to seek out members, and to guide the beliefs and actions of their adherents.¹⁴ What, then, is precisely guaranteed?

Article 14(1) is phrased as a negative right; that is to say, the state cannot impose the practice and confession of a particular faith upon the individual. It guarantees to the citizen that the government will not endorse any particular creed and thus may be understood as the right of the citizen to be free from religion; it does not, however, guarantee freedom of religion. In the Western understanding of the term, “secular” implies that a government or state favors no particular religion and thus tolerates all faiths. However, I would argue that

13. *Id.* art. 55(3).

14. The First Amendment to the Constitution of the United States says nothing about an individual’s right to believe. Instead, it speaks of the institution of religion and prohibits the state from either “respecting an establishment” thereof or “prohibiting the free exercise thereof.” U.S. CONST. amend I. The Supreme Court decision in *Cantwell v. Connecticut* clarified in greater detail what is meant by freedom of religion, noting that it consists both of the “freedom to believe and freedom to act.” 310 U.S. 296, 303–04 (1940). The Court maintained that “[t]he first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.” *Id.* However, the Court was clear in pointing out that the government, even in trying to ensure the good order and protection of society, “may not . . . wholly deny the right to preach or to disseminate religious views.” *Id.* at 304. It further pointed out that such regulations or restrictions on the right to act had to be “general and nondiscriminatory” in nature. *Id.* Finally, in *Cantwell* the Court also struck down a Connecticut statute that required religious organizations to be certified as such to engage in solicitation. The Court was quite clear that such a statute gave an official the authority to:

determine whether the cause is a religious one. . . . His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty. . . .

. . . .
 . . . The State is . . . free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience. But to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty. . . .

Id. at 305–07.

one can maintain that the term used in the Russian Constitution, “*svetskoe gosudarstvo*,” and translated into English as “secular state” or “secular government,” carries with it not the understanding of secular as “religiously neutral” but rather the connotation of “temporal.” That is to say, a “*svetskoe gosudarstvo*” is one where the state does not interfere in matters of the church (e.g. government selection of hierarchs or determination of dogma) and concerns itself with temporal, earthly matters; this does not necessarily imply, however, that society as a whole is religiously neutral. Instead, society can express its preferences in religious matters through non-governmental means.

Article 14(2) is problematic because it states that “religious associations,” rather than religions or faiths, are equal before the law. In other words, groups of believers do not automatically constitute an organization with legal personality. Since both the term itself, as well as the procedure by which such associations are formed, are left undefined in the Constitution, the power is left to the state to define by enabling legislation precisely what constitutes a “religious association,” and, in fact, the 1997 law “On Freedom of Conscience and On Religious Associations” seeks to do just that.¹⁵ Article I of the Law states clearly that its purpose is to “regulate . . . the legal status of religious associations.”¹⁶ Thus, by shifting the basis of legal equality from religions to associations, it is constitutionally possible to differentiate legally among different faiths based on their status of incorporation as a legal entity, as the 1997 law clearly does.

The personal right expressed in Article 28 is likewise flawed in formulation. It is clear that an individual is not granted the right to “freedom of religion,” and, more importantly, religions themselves have no right to exist and freely operate under the Russian Constitution. Rather, the individual is guaranteed the right to freedom of

15. This is, after all, the common European juridical practice, that a state has a certain degree of latitude to define how an abstract human right is to be translated into actual practice. In the *Kokkinakis v. Greece* decision of the European Court of Human Rights, for example, the justices noted that a “certain margin of appreciation is to be left to the Contracting States” to determine how the rights to freedom of conscience and expression are to be manifested and exercised in society. 260 Eur. Ct. H.R. (ser. A) at 21 (1993). In *Kokkinakis*, the European Court addressed the conviction of a Jehovah’s Witness for proselytism in Greece, to determine whether prohibitions on evangelization violated Greece’s obligations under the European Convention to defend religious freedom.

16. FEDERAL’NYI ZAKON O SVOBODE SOVESTI I O RELIGIOZNYKH OB’EDINENIYAKH 3 (1998) [hereinafter FEDERAL’NYI ZAKON].

conscience and profession in a liturgical context, as rendered by the Russian term *veroispovedaniia*. One cannot equate this article with guarantees for the “free exercise of religion.” The Russian Constitution focuses on individual “confession” (*ispovedaniia*), which does not carry the same connotation.¹⁷ To “confess” one’s faith is primarily a liturgical act, something done in worship; whereas “exercise” carries a broader meaning, not simply the freedom to worship, but to carry out a whole host of non-liturgical, non-worship related functions. Moreover, Article 28, even when providing for a person to “confess” and “act upon” his beliefs in conjunction with others, does not automatically define such corporate activity as fulfilling the definition of a “religious association” as contained in Article 14.¹⁸

A similar problem exists with the constitutional provision that allows a person to “spread” his or her beliefs. Once again, the focal point is the individual, rather than a religious corporation. The Constitution guarantees the right of an individual to express, explain, and discuss his or her “opinions.” It does not, however, automatically extend the right to “spread” beliefs to all religious groups. Moreover, this clause says nothing about the right of religious corporations to spread beliefs in a broad fashion (e.g. through the operation of organs of mass media or by renting of public facilities). The 1997 Law seems to indicate that informal groups of religious believers who are not registered under the law as a juridical corporation (and thus enjoy the status of a “religious organization”) have no rights to property or status other than those possessed by the group’s members as individual citizens.¹⁹ Moreover, the individual’s right to freedom of

17. This distinction comes across very clearly in the classic Russian prayers, where a distinction is often drawn between “confession” of faith and “execution” of action. In one of the morning prayers, God is asked to assist the petitioner to “carry out your will (*tvoriti voliu Tvoiu*)” and to “sing to you in a heartfelt confession” (*peti Tia vo ispovedanii serdechmem*). See also SOKRASHCHENNYI MOLITVOSLOV 6 (1850). Such a distinction can clearly be seen in the initial translations of the Psalms; “*ispovedaniia*” is linked to liturgical praise, thanksgiving, and confession (as in *Psalms* 136), while “*ispolnenie*” is connected to activity, to carrying something out, to fulfillment (as in *Psalms* 103). In fact, the glossary attached to the Psalter defines the verb “*ispovedatisia*” as “to glorify, the giving of praise” and “the recognition of sin.” The overwhelming sense of the word “*ispovedaniia*”, therefore, is one’s prayerful statement of belief, rather than any sense of “exercise” of that belief. See PSALTIR 279, 373, 443 (1994).

18. In interpreting Article 9 of the European Convention on Human Rights, the European Court on Human Rights, in the *Kokkinakis* decision, pointed out that “religious freedom is primarily a matter of individual conscience” as described in that article. *Kokkinakis*, 260 Eur. Ct. H.R. (ser. A) at 17.

19. FEDERAL’NYI ZAKON, *supra* note 16, at 6.

speech, and the freedom to spread information and views, guaranteed in Article 29 of the Constitution, is nonetheless limited by the vague phrase that such rights must be exercised only “by legal means.”²⁰ The state is thus free to set out in enabling legislation precise limits on the abilities of individual citizens to engage in public discourse. Moreover, Article 29(2) already contains explicit restrictions of the right to free speech should that speech be deemed to be hateful or promote superiority on any type of grounds, including religious beliefs.

Presumably, the individual has the right to personal beliefs and to make “confession” of those beliefs by himself or with others in the privacy of one’s home or in privately owned property. Nowhere does Article 28 speak of any institutional rights possessed by religions per se. This clause contains no guarantees that religious groups may own property, maintain corporate institutions, or function as social organizations. It “privatizes” religious expression and provides no automatic entry into the public square for religions as corporate, social institutions. Nor does Article 30 of the Constitution, which recognizes the right to “*ob’edinenie*” (association, organization) and states that “the freedom of action of public associations is guaranteed,”²¹ provide much assistance. Lacking concrete standards, the “bridge” that transforms a private group’s “confession of faith” into a social organization that is in fact a juridical person under the law, capable of owning property and functioning as a public institution, is left up to the state to decide in separate articles of legislation. This is precisely what is done in the 1997 law. In defining what is meant by the term “religious association,” Article 7 creates the category of a “religious group” (*religioznaia gruppа*) that consists of no less than ten citizens of the Russian Federation who have voluntarily assembled for “the goals of common confession (*sovместного исповедания*) and the dissemination of the faith.” However, a religious group functions without official registration as a juridical person, and thus remains an informal, private group of citizens. It is thus differentiated from a religious organization, which is a registered religious association that enjoys the status of a legal corporation and can own property and exist in society as an independent actor.²² For a private

20. KONST. RF art. 29.

21. *Id.* art. 29(2).

22. FEDERAL’NYI ZAKON, *supra* note 16, at 6.

gathering of citizens assembled for religious “confession” to transform itself into a recognized public organization requires registration with the state, and the group must fulfill the proviso that it has maintained a corporate identity and continuity in meeting for fifteen years.²³

The 1997 Law gives to the state the ability to determine which groups constitute authentic religious groups and which do not. Article 12 of the legislation provides for denial of registration if “the organization that is being created is not recognized in the category of [being] religious.” Thus, while citizens may be free to “hold beliefs” and to “confess” them, it is the state which determines what is, and what is not, a religion.²⁴ More ominous is Article 14 of the 1997 Law, which lays out the procedure “for the liquidation of a religious organization and the prohibition of the operation of a religion organization or religious group.” While no one argues the point that a society has the right to outlaw certain acts and that freedom of religion is not an absolute cover to justify any and all deeds, the 1997 Law permits the state to extinguish legally the operation of any particular religion on a variety of grounds, such as “destroying public security” or contributing to “the destruction of the family.”²⁵

The problem, in the end, is that Russian jurisprudence does not, as of yet, possess a comprehensive ruling as to what constitutes “religious freedom” as defined in the Constitution. Most rulings, up to this point, have concerned technical issues regarding implementation of existing laws, rather than putting forward any broad principles regarding religious freedom. Nor is it entirely clear that an appeal to pan-European jurisprudence, especially with regard to rulings handed down from the European Court of Human Rights,²⁶ would

23. *Id.* at 7.

24. *Id.* at 10.

25. *Id.* at 10–11. This is in direct contrast to the American constitutional tradition, whereby a religion itself cannot be proscribed even if it holds as any of its tenets of belief or practice matters which are deemed illegal under the law. *See Reynolds v. United States*, 98 U.S. 145 (1878). As the Court noted, “Laws . . . cannot interfere with mere religious belief and opinions, they may with practices.” *Id.* at 166.

26. One might make the argument that the European Court’s rulings, which seek to define the meaning of Article 9 of the European Convention on Human Rights (which deals with religious freedom), would be relevant to the Russian case since the wording used in the Convention is not entirely dissimilar from Article 28 of the Russian Constitution.

automatically lead to any reversals of Russian state policies in the enforcement of the 1997 law.²⁷

Therefore, it is only through deliberate constitutional revision that these loopholes can be closed. One proposal would be to replace the language in Article 14.2 from “religious associations” to read simply “religions,” so that the clause would say, “All religions are separated from the state and equal before the law.” This would then connect directly to the clause in Article 28 that says a person is free to confess “any religion.” Another solution would be to reword Article 28 so that the individual or collective practice of a religion is defined explicitly as a “religious association.” Article 28 could also be strengthened by not only guaranteeing freedom of conscience and belief for the individual but also guaranteeing the free exercise of religion itself. Perhaps an additional clause could be added, so that after the recitation of the individual’s right to freedom of belief, a second phrase would state, “Religious activities are protected by the state” or some other such wording that would make it clear that not

27. The European Court, for example, passed over without comment the Austrian system of classifying religious organizations into “recognized” religious communities versus religious “groups” which do not enjoy such recognition. *See, e.g., Hoffman v. Austria*, 255 Eur. Ct. H.R. (ser. A) at 56, ¶ 22 (1993). As previously noted, the European Court, in interpreting Article 9, did acknowledge that while people have a right to “manifest” their faith publicly, Article 9 is primarily a guarantee for the individual’s right of conscience rather than a general guarantee of freedom of religion. Moreover, the court has continued to recognize that a state does have the right to “place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected.” *See Kokkinakis v. Greece*, Eur. Ct. H.R. (ser. A) at 17–19, ¶¶ 31, 33 (1993). In a key dissenting opinion to the *Kokkinakis* case, submitted by Judge N. Valticos, and likely to be seized upon by proponents of the 1997 law in Russia, Article 9 is interpreted in a much narrower fashion, that it is “designed solely to protect the religion of individuals and not their right to attack that of others.” In his opinion, “[s]omeone who proselytizes seeks to convert others; he does not confine himself to affirming his faith but seeks to change that of others to his own” and that active missionary work goes beyond the right given in Article 9 to “manifest” one’s religion. *See Kokkinakis*, at 30–31 (Valticos, J., dissenting). The recently-handed down decision in the case of the *Jewish Liturgical Association Cha’are Shalom ve Tsedek v. France*, No. 27417/95 (Eur. Ct. H.R. June 27, 2000) <<http://www.dhcour.coe/fr/hudoc>>, on the one hand, does contain a strong affirmation that religious groups collectively exercise the individual rights guaranteed in Article 9. *See id.* slip op. at 22, ¶ 72 (stating, “[t]he Court considers . . . that an ecclesiastical or religious body may, as such, exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention.”). Overall, however, the Court reinforced the power of the state to extend or deny recognition of religious bodies, in this case, allowing the French government to deny to this Jewish organization the right to ritually slaughter animals because an existing group enjoying state recognition already performs such functions.

only individuals, but also religions as corporate entities, have a right to exist, disseminate their views, and seek adherents.²⁸

28. This is not simply an issue for Russia, but for many nations in the world where such loopholes exist. Missionary work and corporate religious activity is banned or restricted, either directly or indirectly, in a number of countries whose own Constitutions contain similar language (and who are signatories to international human rights treaties) on the grounds that while a person's individual right to freedom of belief is protected, the religion to which he or she belongs has no right to engage in public activity. In a country like Mauritania, for example, freedom of belief is understood in a private sense, as the following excerpt from the 2000 State Department report on religious freedom makes clear:

Shari'a (Islamic law), proclaimed the law of the land under a previous government in 1983, includes the Koranic prohibition against apostasy; however, it has never been codified in civil law or enforced. The small number of known converts from Islam suffered no social ostracism, and there were no reports of societal or governmental attempts to punish them.

Although there is no specific legal prohibition against proselytizing by non-Muslims, in practice the Government implements the prohibition against proselytizing by non-Muslims through the use of Article 11 of the Press Act, which bans the publication of any material that is against Islam or contradicts or otherwise threatens Islam. The Government views any attempts by Christians to convert Muslims as undermining society. Foreign Christian NGO's limit their activities to humanitarian and development assistance. Christians in the foreign community and the few Christian citizens practice their religion openly and freely. Under Article 11 of the Press Law, the Government may restrict the importation, printing, or public distribution of Bibles or other non-Islamic religious literature, and in practice Bibles are neither printed nor publicly sold in the country. However, the possession of Bibles and other Christian religious materials in private homes is not illegal, and there appears to be no shortage of Bibles and other religious publications among the small Christian community.

There are several foreign, Christian NGO's active in humanitarian and developmental work in the country. They practice their religion openly, but respect the proscription against proselytizing.

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 2000 ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: MAURITANIA (Sept. 5, 2000) (visited Apr. 27, 2001) <http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_mauritan.html>. Similarly, in Singapore, the State Department noted:

The Constitution provides for freedom of religion, and the Government generally respects this right in practice; however, the Government bans some religious groups. The Constitution provides that every citizen or person in the country has a constitutional right to profess, practice, or propagate his religious belief as long as such activities do not breach any other laws relating to public order, public health, or morality.

There is no state religion. However, all religious groups are subject to government scrutiny and must be registered legally under the Societies Act. The 1990 Maintenance of Religious Harmony Act, which was prompted by actions that the Government perceived as threats to religious harmony, including aggressive and "insensitive" proselytizing and "the mixing of religion and politics," gave the Government the power to restrain leaders and members of religious groups and institutions from carrying out political activities, criticizing the Government, creating "ill-will"

II. TRADITIONAL ATTITUDES TOWARD RELIGIOUS FREEDOM IN RUSSIAN POLITICAL THOUGHT

In addition to the loopholes within the Russian Constitution regarding the protection of individual religious liberty, the very phrasing of these articles—couched in terms of Western individualism—clashes with deeply-rooted historical and constitutional attitudes in Russia itself with regard to how “religious freedom” is to be understood and applied. Through the agency of the Greek *Nomocanon*,²⁹ ancient Russia was exposed to the idea that religious identity is a hallmark of one’s membership in the social community and the political state.³⁰ Therefore, religious freedom in Russia was historically understood in a communal rather than individual manner. Thus, the concept of the “genetic” or “national” believer, that people should adhere “to a religion traditional to their family or nation,” carries a great deal of currency in contemporary post-Soviet Russia.³¹ This is

between religious groups or carrying out subversive activities. The act also prohibits judicial review of its enforcement or of any possible denial of rights arising from it. . . .

. . . .
. . . while the Government does not prohibit evangelical activities in practice, it discourages activities that might upset the balance of intercommunal relations.

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, 2000 ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: SINGAPORE (Sept. 5, 2000) (visited Apr. 27, 2001) <http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_singapor.html>.

29. The *Nomocanon* was a collection of both the legislation promulgated by the Church as well as secular laws that affected religious matters. It served as the primary code for church-state relations in the East until the early modern period. In Russia it was often referred to as the *Kormachaia Kniga*.

30. The 6th Novella of the Emperor Justinian lays out the ideological principle of *symphonia*, the harmony that should exist between church and state, as two authorities co-existing within a single commonwealth:

There are two great gifts which God, in his love for man, has granted from on high: the priesthood and the imperial dignity. The first serves divine things, while the latter directs and administers human affairs; both, however, proceed from the same origin and adorn the life of mankind. Hence, nothing should be such a source of care to the emperors as the dignity of the priests, since it is for their (imperial) welfare that they constantly implore God. For, if the priesthood is in every way free from blame and possesses access to God, and if the emperors administer equitably and judiciously the state entrusted to their care, general harmony will result and whatever is beneficial will be bestowed upon the human race.

Quoted in JOHN MEYENDORFF, *IMPERIAL UNITY AND CHRISTIAN DIVISIONS* 209 (1989) (original Greek omitted).

31. R. Baltanov and G. Baltanova, *Islam, Christianity, and New Religious Trends in Tatarstan: The Issue of Conversion*, in *THE CHRISTIAN-MUSLIM FRONTIER: CHAOS, CLASH,*

especially true when a particular faith or creed is felt to be a defining characteristic of membership in the national community.³² Is Russian Orthodoxy, therefore, an intrinsic part of Russian nationhood and, as such, part of the “social contract” that defines the Russian people, or at least the ethnic Russians (*russkie*) who form the core *ethnos* of the Russian Federation? In 1997, for example, President Boris Yeltsin “emphasized the unique role of Orthodoxy in the thousand-year history of the Russian state and in the contemporary transformation of Russian society.”³³ Similarly, the Preamble to the 1997 Law “On Freedom of Conscience and on Religious Associations” explicitly recognized “the special role played by Orthodoxy in the history of Russia, in the establishment of its spirituality and culture.”³⁴

Constitutionally, the federal government, along with republican and local governments, is prohibited from creating a state religion and is barred from showing preferential treatment to any particular religious association. However, the federal government, under Article 71, is empowered to undertake policies designed to lead to the “cultural and national development of the Russian Federation.”³⁵ Article 72 gives shared responsibility to federal and local authorities to “protect monuments of history and culture” and to handle “all questions of upbringing [development], education, science, culture, physical culture and sport.”³⁶ Given the close tie between traditional religion and national culture, therefore, the state has a great deal of maneuvering room to promote and prefer particular faiths under the guise of supporting, defending, and enhancing cultural life, from the disbursement of state funds for the construction of churches (designated as historic monuments or landmarks of national culture) to the

OR DIALOGUE? 88 (Jorgen S. Nielsen ed., 1998).

32. Article 9 of the Constitution of the Republic of Georgia, for example, declares that the “state recognises the special importance of the Georgian Orthodox Church in Georgian history but simultaneously declares complete freedom of religious belief and confessions, as well as independence of the church from the state.” GEOR. CONST. art. 9 (1991) <http://www.parliament.ge.parl/L_A/S_P/CONSTITUTION/law.htm>.

33. *Sostial'sia telefoni razgovor prezidenta RF i Sviateshogo Patriarkha Po Povodu Zakona O Svobode Sovesti*, ITAR-TASS, *PRAVOSLAVIE V ROSSII*, (Aug. 1, 1997) <<http://www.or.ru>>. See also BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 2000 ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: RUSSIA (Sept. 5, 2000) (visited Apr. 27, 2001) <http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_russia.html> [hereinafter 2000 ANNUAL REPORT: RUSSIA].

34. FEDERAL'NYI ZAKON, *supra* note 16, at 3.

35. KONST. RF art. 71.

36. *Id.* art. 72.

teaching of specific religious dogmas and practices in schools (revival of traditional mores).³⁷ Legal establishment may be prohibited, but social or national establishment is not. Based on how one interprets Article 3 of the Russian Constitution, vesting “the people” as the ultimate sovereign authority,³⁸ one might argue that the state is bound both to respect the individual choices of citizens in religious matters (personal freedom of conscience) and also to honor the historic, collective choice of the national group.³⁹

Social contract theory proceeds from the assumption that “all men are naturally free and equal, and that they could have only formed a society by their own volition. Accordingly it was commonly held that though men were naturally inclined for life in society, and in fact needed it, they must create society by a deliberate act.”⁴⁰ When “individuals agree to surrender certain freedoms” the “foun-

37. Commenting on the work of Will Kymlicka, Riccardo Guastini pointed out, States cannot be neutral towards cultures as they are supposed to be towards religions. This is so since no culture can survive if its language is not “the language of the government”—“when the government decides the language of public schooling, it is providing what is probably the most important form of support needed by societal cultures.” More generally, “government decisions on languages, internal boundaries, public holidays, and state symbols unavoidably involve recognizing, accommodating, and supporting the needs and identities of particular ethnic and national groups.”

Riccardo Guastini, *Kymlicka’s Multicultural Citizenship: A Liberal View*, in *THE LAW OF RELIGIOUS IDENTITY: MODELS FOR POST-COMMUNISM* 68 (Andras Sajó and Shlomo Avineri eds., 1999).

38. KONST. RF art. 3.

39. While the Preamble to the Constitution has no juridical value, it does reflect the societal attitudes of the framers. The use of the term “*sud’ba*” (fate, destiny) implies that the Russian people are more than a random collection of individuals who happen to inhabit a particular geographic entity that exists as a political community, but share some sort of overarching common goals and values that provide a defined identity. Aleksei Vasiliev makes reference to this mindset when, in discussing Russia’s special place between East and West, he notes:

Historically, the Russians are not only of Slavonic “blood,” but also Finno-Ugric and Turkic. There are common elements in music, dance, ornaments, poetry, ethnic character, and psychology. . . .

. . . .
 . . . Russia herself formed first as a multiethnic and then as a multi-confessional country. Many contemporary scholars hold that some of her inhabitants . . . , given their linguistic, ethnic, religious and even racial diversity, have acquired common features and developed a common cultural stratum, way of life and style of behavior.”

Aleksei Vasiliev, *Russia’s Destinies and Islam*, in *THE CHRISTIAN-MUSLIM FRONTIER*, *supra* note 31, at 24–25.

40. J.W. GOUGH, *THE SOCIAL CONTRACT: A CRITICAL STUDY OF ITS DEVELOPMENT* 81 (2d ed. 1957).

dation of a political society” can be laid, by which each person gives his consent to be bound by certain rules and regulations, to a code of behavior.⁴¹ Traditionally, the “social contract” was described as an actual historical event. Over time, in Western political thought (following the line taken by the philosopher Immanuel Kant), the contract was put forward not as historical reality, but as “idea of reason.” Therefore, as Kant concluded; “political rights and duties should be ordered ‘as if’ political obligation were founded on a contract. . . .”⁴²

In either case, as R. L. Nettleship pointed out,

The conception of an original contract upon which society is based . . . is, emphatically, unhistorical . . . , but it has been not the less influential. . . . It is based upon a very important fact, that every civilized community, perhaps any real community, requires, in order that it may exist at all, a mutual recognition of rights on the part of its members. . . . [T]he potency of the idea lies not in the fictitious historical account it gives of the matter, but in the real present truth it expresses.⁴³

The story of the conversion of ancient Rus’ to Orthodox Christianity, as presented in the *Chronicle of Bygone Years*,⁴⁴ contains within it the seeds of two “social contract” interpretations of the relationship of the Russian nation to Orthodox Christianity. Even if the account itself is fictitious in nature, its very presence in what is set forth as literal history is meant to guide readers to reach the conclusions that the choice made by Russian society at the close of the tenth century is both logical and proper. Social contract theory operates on one of two premises: 1) either, at some point in the past, a formal contract had been drawn up and approved that is subsequently ratified by social acquiescence of succeeding generations (e.g., the U.S. Constitution); or 2) the status quo is presented as “one that a suitably placed agent could rationally have contracted into.”⁴⁵

The narrative opens in A.D. 986 with the visit of missionaries of various world religions to Vladimir, the Grand Prince of Rus’. Prior

41. BLACK’S LAW DICTIONARY 1395 (7th ed. 1999).

42. GOUGH, *supra* note 40, at 244.

43. R.L. NETTLESHIP, LECTURES ON THE REPUBLIC OF PLATO 52–53 (2d ed. 1901), quoted in GOUGH, *supra* note 40, at 245–46.

44. The text from which I will be citing will be the Commission version of the Novgorod Chronicle, found in NOVGORODSKAIA PERVAIA LETOPIS’ 104 (A.N. Nasonova ed., 1950) [hereinafter NPL].

45. BLACK’S LAW DICTIONARY 354 (7th ed. 1999).

to this point, Russia, as a society, was largely undefined in religious matters, which is why, in part, missionaries from various world faiths had arrived, hoping to convert people to their particular religion. Then begins the “test” of faiths, with Vladimir evaluating the merits of each faith not only for himself personally, but for Russian society as a whole.⁴⁶ By recording this event, the chroniclers invited their readers to hypothetically place themselves in Vladimir’s position and to evaluate his conclusions.⁴⁷

However, Vladimir does not make the decision on the merits of his own authority. The chronicle records that after dismissing the various missionaries, he was “desiring to test all the faiths” and, therefore, he was not yet prepared to commit to a specific course of action.⁴⁸ Not willing to act unilaterally, “Vladimir assembled his nobles [*boiars*] and the elders of the city.”⁴⁹ The elders of the city were the elected representatives of the assembly (the *veche*), which comprised all free-born citizens of the city. This assembly was considered to be the source of sovereign authority over the entire community. Therefore, the meeting of such an assembly was a universal and “necessary phenomenon” needed to confer legitimacy on any government or administration.⁵⁰ Vladimir’s convocation of this assembly was designed to legitimize the choice of a new faith for society, with the assembly of the capital city, in essence, acting as a virtual representative of the entire commonwealth and empowered to act on its behalf.

Having presented to this assembly everything that the missionaries of the various faiths had told him, Vladimir then asked them:

“And what do you give your minds over to, and what do you answer?” And the nobles and the elders said, “You know, O Prince, that no one disparages his own things, but praises them; but if you

46. NPL, *supra* note 44, at 132–148.

47. Nearly a thousand years later, in the second part of his manifesto, “The Common Task,” Russian philosopher Nikolai Fedorov would repeat Vladimir’s “test of the faiths” as an intellectual exercise to convince his readers of the wisdom of the choice of Orthodox Christianity. See GEORGE M. YOUNG, JR., NIKOLAI F. FEDOROV: AN INTRODUCTION 145 (1979).

48. NPL, *supra* note 44, at 148.

49. *Id.*

50. M. TIKHOMIROV, THE TOWNS OF ANCIENT RUS 233 (1959). As historian George Vernadsky noted, “The town meeting was a universal institution in old Russia, both in the cities and in the rural districts. . . . In normal times it concurred with the prince and the boyar council in all major matters of legislation and general administration.” GEORGE VERNADSKY, KIEVAN RUSSIA 185–86 (1976).

wish to test surely, you have at your [disposal] men, send them to examine [test] each service and how each serves God.” And this speech was liked by the prince and all the people, and *they chose men* wise and learned, by number ten.⁵¹

What the chroniclers are laying out is a situation by which the sovereign authorities of the land, representing collectively the people, having themselves been vested with power—in theory, by the will of the people—are in turn empowering an elected commission to go out and examine the world’s religions and to make a binding recommendation upon their return. In other words, one can argue, based upon a reading of the text, that each individual transferred his right of free choice to the collective, empowering it to act upon his behalf, and that the proper authorities of the collective will, in turn, devolve that authority upon the commission to act on their behalf. The text is quite clear that the selection of the commission was by the choice of both the prince and the people.

Such an interpretation—that the commission was empowered to act for society as a whole and not simply to choose a faith for themselves personally—seems tenable based upon the narrative following the return of the commission. Having presented its report in favor of adopting the form of Christianity practiced by the Byzantine (East Roman) Empire, Vladimir, addressing the assembly, posed the question, “And where shall we be baptized?” The council thereupon vested Vladimir with authority to make the arrangements.⁵² It is also supported by the later testimony of the common people, who, upon being presented with Vladimir’s order to present themselves for baptism, noted, “If this were not a good thing, then our prince and his nobles would not have received it.”⁵³

To be Russian, therefore, was to be an Orthodox Christian; it was an integral part of one’s membership in the community, not subject to individual choice. Such attitudes remain strong even at the beginning of the twenty-first century. As the State Department’s annual report on international religious freedom for 2000 pointed out: “Many Russians firmly believe that at least nominal adherence to the Russian Orthodox Church is at the heart of what it means to be

51. NPL, *supra* note 44, at 148 (emphasis added).

52. *Id.* at 150.

53. *Id.* at 156.

Russian, and Russian Orthodoxy is considered in conservative nationalist circles as the de facto official religion of the country.”⁵⁴

Therefore, traditionally in Russia, religious freedom was the right of other nations resident within the territory of the Russian state to maintain their own distinctive “social contract.” In a number of areas in medieval Russia, some degree of religious toleration, based upon the communal principle, flourished.⁵⁵ In the city-state republic of Novgorod as well as in other communes in northern Russia, religious minorities were organized as parish communities with distinct wards, governed by their own officials and under their own laws.

Novgorod, for example, politically defined itself as a corporate community in terms of the Orthodox cathedral of the city, St. Sophia. Then within Novgorod, there existed two other separate communities to facilitate the residence of non-Orthodox persons in the city: the Gotlanders’ “Gothic Yard,” built around their Church of St. Olaf, which was a Scandinavian enclave; and the “German Yard,” known as the court of St. Peter, after the name of the Catholic parish of that city. Each of these “courts” had its own living quarters, offices, and storage areas, and each was governed by its own laws and regulations. Reciprocal arrangements existed so that in the Catholic city of Visby, the Orthodox Novgorodians possessed their own Orthodox church and district governed by its own rules.⁵⁶ The A.D. 1229 treaty guaranteed that the non-Orthodox in Novgorod had full rights of residency (if not of political citizenship). If a dispute broke out between citizens of the two “communities,” e.g., a Catholic German and an Orthodox Russian, a mechanism for the settlement of such a dispute was provided, with representative of both communities meeting on “neutral” ground, in the yard the Church of St. John, which, while an Orthodox place of worship, was close to the “German Yard” and was associated with them, forming a meeting-point between the larger Orthodox community of

54. 2000 ANNUAL REPORT: RUSSIA, *supra* note 33.

55. This was especially noteworthy in pre-Mongol Russia in cities like Kiev, Ladoga, Polotsk, Smolensk, and Pereyasavl. See Ambrosius Pogodin, *On the Question of the Order of Reception of Persons into the Orthodox Church, Coming to Her from Other Christian Churches*, VESTNIK RUSSKOGO KHRISTIANSKOGO DVIZHENIYA, no. 173 (I-1996) at 1 (Alvian N. Smirensky trans., 2000) (visited Jan. 16, 2001) <<http://www.holytrinity.org/ecclesiology/pogodin-reception/reception-ch2.html>>.

56. HENRIK BIRNBAUM, LORD NOVGOROD THE GREAT 50, 97, 121 (1981).

Novgorod and the residents of Novgorod who were “citizens” of another “community”—that is, the Roman Catholic Church.⁵⁷

For an individual to change confessions, in theory, he or she would also have to exchange identities, and leave one socio-political community for another. That is to say, a person could exercise free choice in religion only by the right of exit from one social community and through affiliation to another. In practice, this right was rarely exercised. This view, when a person changes his religious affiliation, that a person is thus leaving one community for another, is expressed in the twelfth century “Questions to Kirik,” about the procedure by which a non-Orthodox in Russia should be joined to the Orthodox community:

If a Latin wishes to come under Russian law, let him attend our Church. . . . He is to be given a new name. . . . Then let him bathe in the bathhouse. . . . Four prayers must be read over him. He is dressed in clean clothes. A crown or a wreath is placed on his head.⁵⁸

The actions in this ritual—bathing, being given a new name, and fresh clothes—are all symbols of rebirth. By changing faiths, a person “died” to his old community and was “reborn” into the new “social contract” of the community of his choice.

Throughout the imperial period, most tsarist proclamations of religious toleration for non-Orthodox groups, be they Muslims, Lutherans, Catholics, or others, were generally given to ethnic-national communities in specific geographic areas rather than all individual citizens throughout the state. One of the best examples of this is the toleration extended to the Vygovskaia Pustyn’, a settlement of Old Believers (dissenters from the official church) in northern Russia. The Vyg community enjoyed local self-government and the right to retain its own forms of worship and life. (Similar contracts were reached with other old believer communities such as the Grebenskii cossacks of the Caucasus). The Vyg community was also able to acquire legal title to land in other provinces, and its agents and businessmen could travel freely and retain the rights to perform their

57. *Adapted from* 2 URKUNDLICHE GESCHICHTE DES URSPRUNGES DER DEUTSCHEN HANSE 29 (G.F. Sartorius ed., 1830), *reprinted in* A SOURCE BOOK FOR MEDIEVAL ECONOMIC HISTORY 225–31 (Roy C. Cave & Herbert H. Coulson eds., photo. reprint 1965) (1936).

58. *See* Pogodin, *supra* note 55.

own religion even outside of the community. Moreover, the Vygovskaia Pustyn' was vested with the authority to issue passports for its own members.⁵⁹ In short, the community was constituted as an autonomous community within the boundaries of the Russian state defined by religious identity.

The communal interpretation of religious expression also strongly influenced nineteenth-century Slavophile concepts dealing with freedom of conscience. In 1860, the Slavophiles addressed an open letter "To the Serbians," advising them, as fellow Orthodox Slavs, how they should approach the issue of religious freedom:

Let there be everywhere complete freedom of Faith and its profession! Let no one endure oppression or persecution concerning matters of knowledge of God or worship! . . . That's why the person of a different faith must be like your guest, protected from every injustice and enjoying all your rights in private life, but on public matters he should not be a full-fledged citizen with the other brothers . . . , passing judgment together with his brothers on public matters. God saved you from internal dissent; do not admit such dissent in the very depths of the people's conscience and in the public spirit . . . we think that they cannot be offended by such exclusion, and they themselves, out of love for you, would not wish to bring the seeds of discord and dissent to your society.⁶⁰

Commenting on the situation in Russia at the beginning of the twentieth century, Donald Mackenzie Wallace wrote:

[I]t seems to a Russian in the nature of things that Tartars should be Mahometans [Muslims], that Poles should be Roman Catholics, and that Germans should be Protestants; and the mere act of becoming a Russian subject is not supposed to lay the Tartar, the Pole, or the German under any obligation to change his faith.⁶¹ These nationalities are therefore allowed the most perfect freedom in the exercise of their respective religions, so long as they refrain

59. See ROBERT O. CRUMMEY, *THE OLD BELIEVERS AND THE WORLD OF ANTICHRIST: THE VYG COMMUNITY AND THE RUSSIAN STATE 1694-1855*, at 68-74 (1970).

60. Quoted in Peter K. Christoff, 1 *AN INTRODUCTION TO NINETEENTH-CENTURY RUSSIAN SLAVOPHILISM: A STUDY IN IDEAS* 254 (1961).

61. The pre-revolutionary Russian Empire was quite diverse religiously, with some 65% Orthodox Christians, 10% Old Believers, 8% Catholics, 4.5% Protestants, 6% Muslims, and 4% Jewish. Aleksandr Shchipkov, *Interreligious Relations in Russia After 1917*, in *PROSELYTISM AND ORTHODOXY IN RUSSIA: THE NEW WAR FOR SOULS* 84 (John Witte, Jr. & Michael Bourdeaux eds., 1999).

from disturbing by propagandism the divinely established order of things.

This is the received theory, and we must do the Russians the justice to say that they habitually act up to it. If the Government has sometimes attempted to convert alien races, the motive has always been political, and the efforts have never awakened much sympathy among the people at large, or even among the clergy. In like manner the missionary societies which have sometimes been formed in imitation of the Western nations have never received much popular support. Thus with regard to aliens this peculiar theory has led to very extensive religious toleration. With regard to the Russians themselves the theory has had a very different effect. If in the nature of things the Tartar is a Mahometan, the Pole a Roman Catholic, and the German a Protestant, it is equally in the nature of things that the Russian should be a member of the Orthodox Church. On this point the written law and public opinion are in perfect accord. If an Orthodox Russian becomes a Roman Catholic or a Protestant, he is amenable to the criminal law, and is at the same time condemned by public opinion as an apostate and renegade—almost as a traitor.⁶²

In other words, each national community has its own particularly-suited form of religious expression and worship, and while individuals are free to dissent, the community also has the right to exclude dissidents from communal life, while the state exists to grant to each distinctive group the right to order its own spiritual and cultural life. Even in the post-Soviet period, there remains a strong consensus that religious freedom means that each component of the “multinational people” of the Russian Federation (as defined in Article 3 of the Constitution) has the right to practice its own “traditional” religion. Thus, it was expected that Catholicism in Russia would be identified with Poles and Lithuanians, various Protestant groups with Germans or Latvians, Islam with Tatars and Bashkirs, and so on.⁶³

To what extent, however, in post-Soviet Russia, can we speak of distinctive ethno-religious groupings? After seventy years of Soviet nationality policy, which emphasized not only the *sblizhenie* (drawing

62. DONALD MACKENZIE WALLACE, *RUSSIA* (1905) (visited Jan. 16, 2001) <<http://www2.cddc.vt.edu/gutenberg/etext98/rsdmw10.txt>>, ch. 17, at *177.

63. Shchipkov, *supra* note 61, at 80–82, 90–91; *see also* Sergei Filatov and Lyudmila Vorontsova, *Russian Catholicism: Relic or Reality?*, in *PROSELYTISM AND ORTHODOXY*, *supra* note 61, at 98.

together) but also the *sliianie* (merger) of all national groups, many of the pre-revolutionary distinctions have been erased. Implicit in such policies was the breaking down of cultural and linguistic barriers.⁶⁴ The resulting increase in the use of Russian among all nationalities has meant that a number of these religious denominations that formally might have held services in the “ethnic” language (e.g. German in Lutheran congregations) are now using the modern Russian vernacular; in turn, this means that such services are now as accessible to ethnic Russians (and other nationalities). As a result, as Aleksandr Shchipkov pointed out, “Religious beliefs are now less and less linked with national identity, so it is difficult to define the geographical borders of a particular faith.”⁶⁵ In particular, the Roman Catholic Church as well as a number of Protestant Churches historically connected to specific ethnic groups (Germans, Ingrians, Karelians, etc.) are now drawing in members from outside their traditional ethnic base.⁶⁶ Can one speak of a “traditional” religion for a child whose father is a Russified Tatar and whose mother is Yakut? One cannot also speak of any sort of “geographic” particularism for specific faiths, because industrialization and urbanization have created multiethnic, multiconfessional cities.⁶⁷

The communal understanding of religious freedom, therefore, is becoming increasingly irrelevant in the contemporary Russian Federation. Even if the Constitution would be altered to enshrine this particular view, Russia today is not divided into neat cities and districts based on ethno-religious groups, nor is it feasible to expect that converts from one faith to another should relocate to join with their fellow co-religionists. One can also argue that the “all-Russian/political-Russian” people (*rossiiskii narod*) is by definition an areligious grouping, having no common faith traditions, and is instead an amalgamation of all the peoples and confessions to be found living within the territory of the Russian state. However, what remains unclear is to what degree (among ethnic Russians) other faiths, such as Pentecostalism or Methodism or Catholicism, will be-

64. GORDON B. SMITH, SOVIET POLITICS: CONTINUITY AND CONTRADICTION 308–10 (1988).

65. Shchipkov, *supra* note 61, at 81.

66. *Id.* at 81–92; see also Filatov & Vorontsova, *supra* note 63, at 98, 105; Sergei Filatov, *Protestantism in Postsoviet Russia: An Unacknowledged Triumph*, 28 RELIGION, STATE & SOCIETY 93, 93–104 (2000).

67. See Shchipkov, *supra* note 61, at 84, for his discussion of St. Petersburg.

come socially accepted alongside Orthodoxy as “Russian faiths” (*russkie very*). This will increasingly be linked to the question of whether “Russian” (*russkii*) identity will be defined pluralistically or continue to be interpreted through the prism of the Orthodox experience. Such issues are unlikely to be decided at the constitutional level.

One argument that has not, as of yet, made much headway in Russian discourse on this issue is to suggest that the enshrining of the right of individual free conscience in the Russian Constitution has, to all intensive purposes, dissolved the pre-existing “social contract” linking Orthodoxy with the Russian nation, and therefore all Russian citizens are free to repeat Vladimir’s “test of the faiths” for themselves as individuals and to make their own minds. Therefore, the 1993 Constitution, representing a more recent “social contract” between individuals, society, and the government, gives the right of choice in religious beliefs back to the individual.

At the same time, however, Orthodoxy, having been the religion of the majority of the Russian nation for the past millennium, has shaped and molded many areas of Russian cultural, spiritual, and political life. It would be nigh impossible to separate what is “religious” from what is not; are Rachmaninoff’s liturgical compositions, for example, religious or cultural? Would performance of that Orthodox liturgical music by state-sponsored cultural organs constitute a violation of religious freedom or compromise the “secular” nature of the government? What of the Orthodox churches which stand in the Kremlin—must they be shut down or deconsecrated as part of the constitutional provisions declaring Russia a “secular” state? Such measures are highly unlikely. The government cannot constitutionally mandate that Orthodoxy be stripped from Russian culture. In recognition of this reality, a number of other religious organizations, such as some pastors from the Seventh-Day Adventist Church, for example, seek to find those elements from the dominant Russian-Orthodox culture which are compatible with their own specific religious views.⁶⁸ Again, this is an issue which ultimately lies outside the scope of constitutional law.

68. Mikhail M. Kulakov, *Seventh-Day Adventists*, in PROSELYTISM AND ORTHODOXY, *supra* note 61, at 153.

III. CONCLUSIONS: FRAMING UNIQUELY RUSSIAN ARGUMENTS TO SUPPORT RELIGIOUS FREEDOM IN RUSSIA

To some extent, the weakness of the “rule of law” in post-Soviet Russia makes appeals to executives and judges based on constitutional principles largely an academic exercise, but, over time, as efforts are made to strengthen the role of law, it is important that precedents be set down in Russian jurisprudence. Moreover, such appeals can also help to shape and sway public opinion. Whenever possible, those working for religious freedom should avoid citing Western (especially American) precedents or international treaties when framing their arguments, so as to avoid giving the impression that they are advocating positions that are not in harmony with established Russian laws and constitutional traditions. Nor should current advocates be hesitant to cite incidents from Russian history and pre-revolutionary legislation in pointing to previous and relevant precedents from the past.⁶⁹

The loopholes in the current Constitution—and the contradictions they create—must be squarely addressed. If citizens have a right to freedom of belief, to act on those beliefs, and to do so in conjunction with others, as Article 28 proclaims, then this should form the basis for defining what constitutes a “religious association.” Moreover, since many religions enjoin their members to preach, teach, engage in charity, and have a public witness, it must be argued that curtailing such rights to members of certain faiths (instead of regulation of such activities, which would be binding on all citizens, believers and non-believers alike) is a violation of their right to freedom of belief if they are prevented from acting on those beliefs. Now that calls are being heard at the highest levels of the Russian government for revision of or even a complete replacement of the existing Constitution, there exists an opportunity for legislators, human rights activists, and scholars to clarify precisely the implications of Article 28 for corporate religious organizations.

Advocates for religious freedom must be bolder in claiming Russian history as support for religious liberty. The example of Prince Vladimir “testing the faiths” and being able, not only to send forth his servants to gather information, but also to receive in his own pal-

69. In the United States, Supreme Court decisions regularly take into account historical and cultural factors that predate the framing of the U.S. Constitution in 1787. *See generally* Abington Sch. Dist. v. Schempp, 374 U.S. 203 (1963); Engel v. Vitale, 370 U.S. 421 (1962).

ace missionaries of diverse faiths, must be held up as an important part of Russian history. What Vladimir did a millennium ago on behalf of his people is a right today that every individual Russian citizen possesses—to search out truth. In this light, the conversion of Russians to any particular confession should not be viewed as being “treasonous” to Russian history or culture, but a continuation of the process begun by Vladimir and an emulation of his behavior. Advocates should also not be hesitant in citing relevant legal precedents from Russia’s past, including the decrees on religious toleration enacted by Tsar Peter I (which contained a strong affirmation of the principle of religious freedom, albeit within the context of inviting foreigners to Russia) as well as the 1905 Decree issued by Tsar Nicholas II. The historic toleration of non-Orthodox groups within the Russian Empire (albeit in a communal rather than individual fashion) belies notions that Russia historically was a mono-religious society.

Arguments for religious liberty should avoid moving into areas that deal with questions of national identity and culture. As Lawrence Uzzell of the Keston Institute has pointed out, it is not inconsistent with religious liberty in Russia to also have a formal acknowledgement that the Orthodox Church (for ethnic Russians, at least) has traditionally been the “bearer of cultural identity and moral legitimacy” in society.⁷⁰ The critical area should be to argue that the provision in the 1997 Law (Article 8.5) that restricts the use of the word “Russia” or “Russian” (that is, the political terms used to designate the Russian state and citizens of that state, *Rossia* and *rossiiskii*) to groups that can demonstrate their existence on Russian soil for more than fifty years confuses the distinction of what pertains to Russia as an ethnic community versus the totality of Russia as a political entity. It should be argued that any group that exists within the territorial bounds of the Russian Federation and is subject to its political authority in temporal matters is *ipso facto* “Russian” (*rossiiskii*). Since these political terms do not carry national-ethnic connotations, there can be no charge that “nontraditional” religions are trying to appropriate the cultural legacy of ethnic Russians or of any of the other nationalities of the Federation. Groups should not have to demonstrate their “Russian-ness” to be able to operate, nor, on

70. Lawrence A. Uzzell, *Guidelines for American Missionaries in Russia*, in PROSELYTISM AND ORTHODOXY, *supra* note 61, at 330.

the other hand, should they attempt to alter traditional definitions by which most Russians define their national identity. Instead, a greater focus on the “Russian-ness” (*rossiskii*) of groups, based upon organizational and legal criteria, is what is required. Orthodoxy may be the traditional religion of ethnic Russians (*ruskie*), or Islam that of Bashkirs, but the emphasis should be on obtaining a precedent that there is no such thing as a traditional religion that is binding on all Russian citizens (*rossiane*). Russian citizens, members of the political community called Russia—*rossiane*—(as opposed to the ethnic community of Russians), should be informed that to be Orthodox, Muslim, Baptist, Methodist, or atheist are all equally valid choices.