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## The Icon and the Tracts: A Restrained Renaissance of Religious Liberty in Ukraine

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## The Icon and the Tracts:<sup>1</sup> A Restrained Renaissance of Religious Liberty in Ukraine

*[O]ne of the most vile things existing in the world, religion, [is advanced by] the attempt to replace the official state priests by priests of moral conviction. — V.I. Lenin<sup>2</sup>*

### I. INTRODUCTION

A block from city hall in the Ukrainian metropolis of Lviv stands a domed cathedral. After the Soviets occupied Lviv during the Second World War, they converted this church into a museum depicting the evils of religion throughout history, a type of museum common in the Soviet Union. Beginning in 1992, in addition to the older, dilapidated displays on the Spanish Inquisition and wars of the Reformation, a visitor could observe a second kind of exhibit: brand-new displays of reverently adorned icons and Jehovah's Witnesses' tracts. The museum director, Volodimir Hayuk, whose institution had undergone a complete ideological about-face in the previous months, had taken the absurdity in stride. His business card had read "Museum of History of Religion and Atheism," but now the adaptable Mr. Hayuk was simply crossing out those last two words by hand.<sup>3</sup> He had done his part for *perestroika*. A new chapter in Ukraine's history of religious liberty had opened.

But will this new chapter last? This Comment suggests it will. By surveying Ukraine's religious history, current churches, and modern ideological debate, and by analyzing its recent legislation on religious freedom in the context of Ukraine's three most controversial church-

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1. This title alludes to JAMES H. BILLINGTON, *THE ICON AND THE AX: AN INTERPRETIVE HISTORY OF RUSSIAN CULTURE* (1970), which includes an analysis of Russia's religious history. In this Comment, the "icon" refers to the rebirth of Ukraine's traditional churches and the "tracts" to Ukraine's new religious movements.

2. V.I. LENIN, *Leo Tolstoy as a Mirror of the Russian Revolution*, in *RELIGION* 37–38 (1933).

3. This account reflects the experience of the author in Lviv, Ukraine, in 1992, as a volunteer for an international humanitarian aid organization.

state issues, this Comment concludes that Ukraine's prospects for religious liberty evoke guarded optimism.

State policy regarding religious liberty and legal rights has been extraordinarily important in Ukraine's history. "Ukraine" means "boundary land," and its religious dynamism stems from its location at the boundaries of religious tectonic plates. It straddles two fault lines: between Orthodoxy and Catholicism (the Great Schism occurred in 1054), and between Christianity and Islam.<sup>4</sup> Since A.D. 988, when the kingdom of Kievan-Rus officially accepted Christianity, church and religion have consistently played a central role for the people of Ukraine. No other institution has provided a measure of stability in Ukraine, a nation so dominated by foreign empires that it lacks "a politically usable past."<sup>5</sup>

The collapse of the Soviet Union and Ukraine's declaration of independence in 1991 partially dismantled the Soviet police state and yielded an environment of relatively free speech, press, and religious exercise. By every measure, this liberalization catalyzed an unprecedented religious renaissance. Qualitatively, the new range and variety of religious activities and organizations reflects a profound shift: from religion as the servant of "a state-controlled society to a pluralist and secular religious and social model."<sup>6</sup> Quantitatively, the number of registered congregations grew geometrically in the early 1990s and continues to increase.<sup>7</sup>

Carried forward upon this wave of religiosity, the renaissance unleashed competition both among churches and between church and state. Such disputes were inconceivable in a state with one party and one church, which used brutal force and subtle infiltration to

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4. See Bohdan Bociurkiw, *Politics and Religion in Ukraine: The Orthodox and the Greek Catholics*, in *THE POLITICS OF RELIGION IN RUSSIA AND THE NEW STATES OF EURASIA* 131 (Michael Bourdeaux ed., 1995). See generally Anna Reid, *BORDERLAND: A JOURNEY THROUGH THE HISTORY OF UKRAINE* (1997).

5. Ilya Prizel, *Ukraine Between Proto-Democracy and "Soft" Authoritarianism*, in *DEMOCRATIC CHANGES AND AUTHORITARIAN REACTIONS IN RUSSIA, UKRAINE, BELARUS, AND MOLDOVA* 330, 331 (Karen Dawisha & Bruce Parrott eds., 1997).

6. Vasyl Markus, *Politics and Religion in Ukraine: In Search of a New Pluralistic Dimension*, in *THE POLITICS OF RELIGION IN RUSSIA AND THE NEW STATES OF EURASIA*, *supra* note 4, 163, 163.

7. See *id.* at 173. In the late 1980s, 3500 congregations distributed among a dozen churches were registered. By 1994, 15,000 congregations representing 67 churches were registered. See *id.* By 1999, the total number of registered religious organizations exceeded 20,000. See Raisa Stetsyura, *Over 1,400 Religious Groups Registered in Ukraine in 1998*, ITAR-TASS, Feb. 8, 1999.

liquidate threats to either. By contrast, the new freedom and accompanying multiplicity of religious organizations makes open disagreements possible, even inevitable. While the West accepts similar disputes at home as normal consequences of pluralism and basic freedoms, Ukraine has inherited a different baseline of normalcy, and this discord troubles many Ukrainians. The three central disputes in this area regard the property rights of churches, the legal status of churches, and governmental policy toward (foreign) missionary organizations. By 1993, the honeymoon of euphoric openness toward religion ended, and Ukraine's policy turned somewhat restrictive.<sup>8</sup> However, Ukraine has rejected both a campaign to establish a state church and an attempt to mimic Russia's recent menacing measures.<sup>9</sup> Ukraine concludes its first decade of independence with significant religious freedom and pluralism intact.

This Comment examines the status of religious freedom in Ukraine by surveying history, law, churches, and current ideological conflicts. It analyzes specifically three primary legal disputes (religious property, legal registrations, and missionary visas) and concludes that Ukraine's prospects for religious liberty evoke guarded optimism. Part II briefly reviews the history of the Ukrainian state as it relates to religion. The current patchwork of Ukraine's churches is described in Part III. The Constitutional and legislative provisions that protect and regulate religious exercise in modern Ukraine are analyzed in Part IV. Part V identifies the competing ideologies in modern Ukraine's government and society—totalitarianism, nationalism, and pluralism—that frame the conflicts between church and state. Part VI analyzes how the topics of the three previous Parts—churches, laws, ideologies—interact currently with three critical legal issues in Ukraine: property, legal registration, and foreign missionary visas. Lastly, Part VII concludes that Ukraine's progress toward an intermediate degree of religious liberty and pluralism will likely be slow but enduring.

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8. For a discussion of the 1993 Amendments, see *infra* Part IV.B.

9. See discussion *infra* Parts V.B.2, V.C.

## II. HISTORY OF CHURCH AND STATE IN UKRAINE

*A. Early Statehood and State Religion*

The religious nature of Ukraine's creation story presaged the special importance that religion would have in the nation's history. In A.D. 988, Prince Volodimir the Great adopted Orthodox Christianity for himself and his kingdom (present-day central Ukraine).<sup>10</sup> After a dramatic procession from the bluffs of his capital, Kiev, down to the riverbank below, Volodimir and his subjects were baptized *en masse*, by force if necessary.<sup>11</sup> Impressed with the beauty of its liturgy and cathedrals (and wary of the doctrinal demands of Judaism and Islam), Volodimir chose Orthodoxy to consolidate his kingdom and form an alliance with Orthodoxy's capital, Constantinople.<sup>12</sup>

Initially, Christianity met strong resistance from pagan believers, who worshipped a pantheon of nature gods.<sup>13</sup> Kiev's imported Christian missionaries and monks sought refuge from native persecution in the caves of Kiev's bluffs. Mongol invaders sacked Kiev<sup>14</sup> in 1240 and, in turn, eventually yielded to the expanding Lithuanian empire.<sup>15</sup> Both these conquerors of Ukrainian lands were content to tax their vassals, leaving undisturbed Ukraine's culture and Orthodoxy.<sup>16</sup>

Meanwhile, the center of Slavic religious and political life gravitated north to Moscow.<sup>17</sup> In the second half of the last millennium, three waves of Protestant missionaries rippled across decidedly Orthodox Ukraine.<sup>18</sup> The first undulations occurred as an extension of the Protestant Reformation; the second followed the influx of German settlers to the steppes of southern Ukraine, invited by the Czar's Manifesto of 1763; and the third accompanied the (often temporary) migrations to the West at the turn of the century.<sup>19</sup>

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10. See OREST SUBTELNY, *UKRAINE: A HISTORY* 33 (1988).

11. See *id.*

12. See *id.* at 33-34.

13. See *id.* at 33, 49.

14. See *id.* at 39-41.

15. See *id.* at 69-70.

16. See *id.* at 72.

17. See DAVID LITTLE, *UKRAINE: A LEGACY OF INTOLERANCE* 7 (1991).

18. See P. Yarotsky, *A History of Missionary Activity in Ukrainian Lands 4-12* (unpublished manuscript, on file with author) (translation by the author of this Comment).

19. See *id.*

*B. Church-State Relations in Prior Periods of Independence*

Aside from recent years, Ukraine's "golden age" of political independence occurred in the seventeenth century. It too contained a powerful religious component. In 1596, the Orthodox bishops of western Ukraine, under Polish influence, formed a politically opportunistic alliance with Rome.<sup>20</sup> This Union of Brest created a hybrid "Uniate" church<sup>21</sup> that united Orthodox doctrine and ritual with an allegiance to the pope. Ukrainian Cossacks rebelled against the foreign (mostly Polish Catholic) nobles who had seized Ukrainian lands and held its inhabitants in serfdom.<sup>22</sup> The Cossack brotherhood created a nucleus of sovereignty (the *Seech*) in central Ukraine that eventually expanded to liberate much of modern Ukraine from foreign control by the 1650s.<sup>23</sup>

A desire to restore Orthodoxy's hegemony largely motivated this expansion.<sup>24</sup> The Cossacks perceived themselves as "defenders" of the faith.<sup>25</sup> The enmity toward exploitative foreigners combined with fervent religious intolerance to form a crusade on three fronts: the Catholic Poles in the west, the Islamic Turks and Tartars in the south, and the Jewish middle class within.<sup>26</sup> But Russia to the north was Orthodox. The Cossack leader Bohdan Khmelnytsky, having restored Orthodoxy to a liberated Ukraine, formed a controversial (but probably necessary) alliance with Moscow, its brother in the faith.<sup>27</sup> Ukraine's independence eroded as Russian imperialism reasserted itself, first with patronage and then invasion by Peter the Great.<sup>28</sup>

This East-West religious and political divide split Ukraine into two spheres of influence until World War II. The Russian Empire and Russian Orthodox Church dominated central and eastern Ukraine, with a "symphonic" cooperation between church and state.<sup>29</sup> Catholic control of western Ukraine alternated between Po-

20. See SUBTELNY, *supra* note 10, at 99–101.

21. The Uniate Church is also known as the Ukrainian Catholic Church or the Greek Catholic Church.

22. See SUBTELNY, *supra* note 10, at 108–15.

23. See *id.* at 127–29.

24. See *id.* at 119–22, 129.

25. See LITTLE, *supra* note 17, at 9–10.

26. See SUBTELNY, *supra* note 10, at 127–29.

27. See *id.* at 134–37.

28. See *id.* at 164–65.

29. See LITTLE, *supra* note 17, at 17.

land and the Austro-Hungarian Empire.<sup>30</sup> During the disruption of World War I and the Russian Revolution, these two halves of Ukraine declared independence and eked out a few years of joint autonomy before the Red Army invaded.<sup>31</sup> During this short interlude of independence, the Ukrainian government viewed the church as a tool of state policy and established briefly an autonomous Orthodox Church in Ukraine.<sup>32</sup>

### *C. Soviet Atheism and Post-Soviet Liberalization*

The era of official Soviet atheism devastated religion. In the first phase, Lenin's begrudging, calculated toleration of the church<sup>33</sup> yielded to Stalin's savage Terror.<sup>34</sup> The second phase began when a besieged Soviet government enlisted the Orthodox Church to rally the faithful against the Nazi invaders.<sup>35</sup> Though permitted to survive as the Soviet Union's official church after the war, the Russian Orthodox Church, in Ukraine as elsewhere, was manipulated and infiltrated by the state. Ironically, it was Stalin, perpetrator of the vast artificial famine intended to break Ukraine's aspirations for autonomy,<sup>36</sup> who unified present-day Ukraine into a single territorial entity. With the addition of traditionally Islamic Crimea in 1954, he ensured that Ukraine's boundaries encompassed multiple latent but fervent religious allegiances.<sup>37</sup>

The Gorbachev era of reform intended to reverse economic decay but also gave voice to popular pressure for religious liberty.<sup>38</sup> In 1989, in a fitting image of Soviet totalitarianism's demise and popular revenge for Stalin's massive church demolition program a half-century earlier, ordinary citizens with hammers pounded to pieces the Berlin Wall and the symbols of Communism's atheist iconogra-

30. See Markus, *supra* note 6, at 163; SUBTELNY, *supra* note 10, at 313-16, 440-41.

31. See SUBTELNY, *supra* note 10, at 350-79.

32. See Serhiy Plokyh, Church, State, and Nation in Ukraine 3-7 (Myroslav Yurkevich trans.) (unpublished manuscript, on file with author).

33. See SUBTELNY, *supra* note 10, at 400-02.

34. See *id.* at 417-21.

35. See Plokyh, *supra* note 32, at 8.

36. See SUBTELNY, *supra* note 10, at 413-16.

37. See *id.* at 499-500.

38. See Howard L. Biddulph, *Religious Liberty and the Ukrainian State: Nationalism Versus Equal Protection*, 1995 BYU L. REV. 321, 325-26.

phy.<sup>39</sup> The following year, the Soviet legislature adopted a remarkably liberal law on freedom of conscience and religion.<sup>40</sup> In early 1991, anticipating independence, the Ukrainian Ministry of Justice began drafting a wave of seventy laws to undo Communism.<sup>41</sup> The very first pair of these laws enacted by Parliament included the law that liberalized the right of religious exercise and organization.<sup>42</sup> Parliament declared independence in August, and a national referendum overwhelmingly ratified that decision in December 1991.<sup>43</sup> In terms of religious freedom, the new statutory framework afforded Ukrainians the space to spread their wings, and the favorable winds of independence sent the renaissance aloft.

### III. CHURCHES IN CONTEMPORARY UKRAINE

Dominated by Orthodox Christianity for a millennium, “Ukraine is now a nation of many religions.”<sup>44</sup> The patchwork quilt of religious allegiance in Ukraine’s territory today divides into three categories according to a matrix of dominance and longevity: (1) the traditional (i.e., pre-Soviet) and dominant churches are the three Orthodox churches and the Uniate<sup>45</sup> church; (2) churches that are traditional but not dominant: Roman Catholics, Jews, Moslems, Baptists, Lutherans, and Jehovah’s Witnesses;<sup>46</sup> and (3) a potpourri of churches that are neither dominant nor traditional in Ukraine, known as new or minority religious movements (“MRMs”). These include the International Society for Krishna Consciousness, Christian evangelical groups, Seventh-Day Adventists, and the Church of Jesus Christ of Latter-day Saints.<sup>47</sup>

39. See Serge Schmemmann, *Clamor in the East: Reunion in West Berlin; For All, East and West, a Day Like No Other*, N.Y. TIMES, Nov. 12, 1989, at 18.

40. See Biddulph, *supra* note 38, at 327–28.

41. See GORDON B. SMITH, REFORMING THE RUSSIAN LEGAL SYSTEM 203 (1996).

42. See *id.* The other law of the pair regarded the rehabilitation of victims of political repression. See *id.*; see also discussion *infra* Part IV.A.

43. See *id.* at 203.

44. Markus, *supra* note 6, at 163.

45. As previously noted, the Uniate Church is also referred to as the Ukrainian Catholic Church or the Greek Catholic Church.

46. Jehovah’s Witnesses could also be characterized as MRMs because of the organization’s relatively recent origin, strong missionary program, and well-organized congregational system. Unlike churches in the MRM category, however, Jehovah’s Witnesses had established a strong presence long before the U.S.S.R.’s collapse.

47. See *infra* Appendix (containing the official statistics of the State Committee on Reli-

These churches operate against a backdrop of religiosity that may seem surprising for a formerly “atheist” state, though much of the religiosity is passive. At least half of the population professes religious belief, but 42% of these believers do not affiliate with a church.<sup>48</sup> Similarly, 33% actively support religion as a positive social force, but 20% support it only passively, and 27% are indifferent.<sup>49</sup> The church enjoys a greater degree of popular trust than any other institution, far above the political system.<sup>50</sup> This section will qualitatively describe these principal religious organizations and the phenomena of MRMs in Ukraine. The Appendix contains the 1999 official statistical report by Ukraine’s State Committee of Religious Affairs.<sup>51</sup>

### *A. Dominant Churches*

In accord with the history chronicled above, Orthodox Christianity remains the cultural backdrop for religious life in Ukraine, particularly in central and eastern Ukraine. But the golden luster of its onion-domed prominence has dulled. Soviet purges decapitated Orthodoxy, and Soviet infiltration discredited the remainder. Even Ukrainian independence has not rescued Orthodoxy from political manipulation.

Today, three separate Orthodox Churches have evolved from an intricate dance of schisms and alliances in this century. First, in 1991, the Russian Orthodox Church (“ROC”) in Ukraine was given partial autonomy and a new name: the Ukrainian Orthodox Church of the Moscow Patriarchate (“UOC-MP”).<sup>52</sup> It boasts the largest member-

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religious Affairs).

48. Andrew Sorokowski, *Religious Life*, UKRAINIAN WKLY., Aug. 25, 1996, at 14 (quoting results of a study by the Kyiv Center of Political Research and Conflict Studies).

49. *See id.* (quoting results of a 1996 study by the Scientific Center of Political Psychology of the Ukrainian Pedagogical Academy).

50. *See* Borys Gudziak, *Ukrainian Religious Life During the First Five Years of Independence*, in TOWARDS A NEW UKRAINE I: UKRAINE AND THE NEW WORLD ORDER, 1991–1996, 49, 53 (Theofil Kis et al. eds., 1997).

51. The official statistics on church size are all at the institutional level; i.e., they reflect the number of registered congregations rather than the number of adherents. Thus, they provide only a rough coloring of the religious map. They fail to account for the ferment of grassroots religious activity that operates below the radar screen of state regulation. No official statistics are available at the level of individual belief. Not even the number of church members can be accurately extrapolated from registration data because legal registration is optional and registered congregations vary widely in size, from a mere ten to hundreds of members.

52. *See* Andrii Krawchuk, *Religious Life in Ukraine: Continuity and Change*, 33:1 J. OF ECUMENICAL STUD. 59 (Winter 1996).

ship of the three and is even larger than ROC membership in Russia.<sup>53</sup> As the ROC's legal successor in Ukraine, it commands the most property and political clout. Second, the Ukrainian Orthodox Church of the Kiev Patriarchate ("UOC-KP") is the orphan of a failed attempt by the Ukrainian government in the early 1990s to create a nationalist state church.<sup>54</sup> Third, the Ukrainian Autocephalous Orthodox Church ("UAOC"), formed in 1921 in opposition to the imperialist ROC, was stripped of its property and forced abroad in 1930.<sup>55</sup> Since its reorganization in Ukraine in 1990, the UAOC has reestablished itself primarily in western Ukraine.<sup>56</sup>

While the Orthodox churches are strongest in central and eastern Ukraine, the Uniate Church commands the allegiance of western Ukraine.<sup>57</sup> In 1946, the Uniate Church was forcibly dissolved and all Uniate clergy, parishioners, and church buildings were "converted" by decree into the ROC.<sup>58</sup> But many Uniate clergy and believers resisted. They went underground as the "catacomb"<sup>59</sup> Uniate Church and survived the Soviet period as the largest underground religious organization in the world.<sup>60</sup> Since declaring its resurrection from the catacombs in 1987 and its legalization in 1989,<sup>61</sup> the Uniate church has rebounded vigorously. But it has fallen short of restoring the "ethnoreligious monolith" that had existed in western Ukraine before the Soviet period.<sup>62</sup>

### *B. Traditional, Non-Dominant Churches*

In the pre-Soviet era, religious influences from Ukraine's neighbors trickled across the border, and a vibrant Jewish community resided within. Despite its domination by the Orthodox and Uniate churches, Ukraine nevertheless enjoyed the beginnings of a religious marketplace in certain (mostly urban) pockets.

53. See Bociurkiw, *supra* note 4, at 132, 144.

54. See *id.* at 143–50; see also discussion *infra* Part V.B.

55. See Bociurkiw, *supra* note 4, at 134.

56. See *id.* at 140.

57. See Markus, *supra* note 6, at 165.

58. See Bociurkiw, *supra* note 4, at 135.

59. Krawchuk, *supra* note 52, at 61.

60. See Bociurkiw, *supra* note 4, at 136.

61. See Serhii Plokyh, *Between Moscow and Rome: Struggle for the Greek-Catholic Patriarchate in Ukraine*, UKRAINIAN WKLY., Feb. 6, 1994, at 9.

62. Bociurkiw, *supra* note 4, at 139.

Roman Catholicism has made recent inroads in the western *oblasts*<sup>63</sup> bordering Poland.<sup>64</sup> It has also extended a token presence across Ukraine that unnerves the Uniate Church, which sees itself as Rome's adequate representative in Ukraine.<sup>65</sup> Baptists and Lutherans, who were invited by the czarist government to bolster the industrial labor force and cultivate the fertile steppe, came to Ukraine as missionaries and settlers and maintained a lasting presence.<sup>66</sup> Jehovah's Witnesses operated for decades at the grassroots level beneath the government's radar and can now do so openly.<sup>67</sup>

Aside from Christian faiths, Judaism boasts a strong heritage. In the mid-nineteenth century, one-third of the world's Jews lived in Ukrainian lands, the birthplace of Hasidism.<sup>68</sup> However, emigration and the Holocaust decimated Jewish communities. Though economic hardship has replaced religious persecution as the impetus for emigration, up to 500,000 Jews remain in Ukraine, the fifth largest population in the world.<sup>69</sup> In recent years, a religious revival enjoyed by urban Jewish communities has caused many to stay.<sup>70</sup>

Islam, which has its historic roots in the Crimean peninsula, also has experienced a renaissance.<sup>71</sup> Since its independence, the Ukrainian government has welcomed Crimean Tartars back to their ancestral homeland. Scattered throughout the U.S.S.R. by forced migrations, many are returning to Crimea, swelling the ranks of Muslim communities.<sup>72</sup>

Perhaps the most remarkable display of religious endurance is the revival of pre-Christian paganism that worships the gods of ancient Kievan-Rus. The largest such religious organization is the Native

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63. An *oblast* is an administrative district comparable to a province. Ukraine's territory is divided into 25 such *oblasts*.

64. See Markus, *supra* note 6, at 168.

65. See Bociurkiw, *supra* note 4, at 152; Andrew Sorokowski, Inter-Church Relations, and Society, Address Before the 1997 Harvard Ukrainian Research Institute Conference on Ukraine Since Independence, 23 (1997) (unpublished address, on file with author).

66. See Yarotsky, *supra* note 18, at 7-11.

67. See Bociurkiw, *supra* note 4, at 152; Yarotsky, *supra* note 18, at 13.

68. See Markus, *supra* note 6, at 172.

69. See James Rupert, *Ukrainian Jews Glory in Religion's Revival: With Decades of Repression Ended, Synagogues and Schools Flourish*, WASH. POST, Mar. 28, 1995, at A1.

70. See *id.*

71. See Markus, *supra* note 6, at 172.

72. See *id.*

Ukrainian National Faith (“RUNVira”), led by intellectuals and artists who oppose the “invading Christian Church.”<sup>73</sup>

### *C. Minority Religious Movements*

After the Bolshevik Revolution, the small currents of religious pluralism were frozen by Soviet rule. Religious channels from abroad were dammed and religious practice at home severely chilled. But the collapse of Communism opened the floodgates. Religious ideas, information, and missionaries poured in, not only from Ukraine’s immediate neighbors as before, but from every continent. Minority religious movements blossomed, creating an unprecedented environment of religious diversity in Ukraine.<sup>74</sup> Spiritual conversion, curiosity, material assistance, exposure to foreigners, and a hope of connections or travel to the West combined to generate immense initial interest in MRMs.

The research of Professor Lyudmila Filipovich provides a generalized description of typical MRMs in Ukraine.<sup>75</sup> Geographically, MRMs have emerged primarily where Soviet atheist policy weakened traditional religiosity most effectively: in urban areas of the central, eastern, and southern regions.<sup>76</sup> Unlike traditional churches, MRMs nurture their membership in smaller, well-accounted-for congregations (usually up to about 100 individuals).<sup>77</sup> Members of MRMs are disproportionately young, female, well-educated, socially established, Russian-speaking, and without prior religious affiliations; ethnicity seems irrelevant.<sup>78</sup>

Though scarcely a decade old, MRMs in Ukraine have matured in their relationship with society. Initially, MRMs in Ukraine “were not so much a religious protest as they were an ideological and worldview protest against the theory and practice of Communism. Only in time did they metamorphosize from movements ‘against’ to

73. Yanina Sokolovskaya, *New Pagans Against the Christian Church*, in *IZVESTIA*, Oct. 31, 1997, at 8, reprinted in 49:44 CURRENT DIG. OF POST-SOVIET PRESS 20 (1997).

74. See Markus, *supra* note 6, at 173.

75. See Lyudmila Filipovich, *Tendencies of Change and Growth of New Religious Movements in Ukraine*, 7–15 (1997) (unpublished manuscript, on file with author) (translation by the author of this Comment).

76. See Markus, *supra* note 6, at 173–77; Filipovich, *supra* note 75, at 6.

77. See Filipovich, *supra* note 75, at 8.

78. See *id.* at 7–15.

movements “for.”<sup>79</sup> With a foothold secured, MRMs “are now interested in their inclusion into the mainstream” through “[c]harity work, education, publication and dissemination of religious literature, propagation of the truths of their teachings in the mass media, state recognition and registration, and a desire to establish relations with traditional churches.”<sup>80</sup> Statistically small, but rapidly growing, the MRM phenomenon has brought new and vibrant colors to the religious landscape.

#### IV. CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional and statutory provisions regarding religious exercise and institutions offer broad protections for these liberties. Their tenor is promising. They ensure a clear textual basis for claims of basic religious liberty. But their implementation is subject to three countervailing historical habits. First, like its citizens, Soviet law lived a double life. Publicly declared legal protections lacked any practical effect. Even the Soviet Constitution, for example, had “guaranteed” religious liberty.<sup>81</sup> Second, citizens lack the leverage to press their legal rights against the state. The rarity of redress and the threat of official retribution discourage most would-be petitioners from the attempt. Third, these statutory provisions are young and this Constitution even younger.<sup>82</sup> Behind them lurks an old totalitarian

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79. *See id.* at 10–11.

80. *Id.* at 11.

81. U.S.S.R. CONST. of 1977, art. 52 (“Citizens of the U.S.S.R. are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda. Incitement of hostility on religious grounds is prohibited. In the U.S.S.R., the church is separated from the state, and the school from the church.”).

The Soviet Constitution also nominally guaranteed other rights central to religious liberty: freedoms of speech, press, assembly, processions, demonstrations, and association in public organizations. *See id.* arts. 50–51 (“Article 50. In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations. Exercise of these political freedoms is ensured by putting public buildings, streets and squares at the disposal of the working people and their organisations, by broad dissemination of information, and by the opportunity to use the press, television, and radio. Article 51. In accordance with the aims of building communism, citizens of the USSR have the right to associate in public organisations that promote their political activity and initiative and satisfaction of their various interests. Public organisations are guaranteed conditions for successfully performing the functions defined in their rules.”).

82. The Law on Freedom of Conscience and Religious Organizations was adopted in 1991, and the Ukrainian Constitution in 1996.

impulse to which officials may default when public laws seem cumbersome.

*A. 1991 Law on Freedom of Conscience and Religious Organizations*

The principal statutory framework for regulating religious exercise is the Law on Freedom of Conscience and Religious Organizations (“Law on FCRO”).<sup>83</sup> It was adopted in April 1991, several months before Ukraine’s independence, and was afterwards reaffirmed as legally effective. Conscious of its break with Soviet history, the statute lists among its purposes “overcoming the negative consequences of the government’s policy in relation to religion and the church.”<sup>84</sup> It proposes also to bring religious rights into harmony with “norms of international law.”<sup>85</sup> The statute’s last article explicitly states that if this legislation conflicts with an international treaty which Ukraine has signed, then the treaty trumps Ukrainian law.<sup>86</sup>

*1. Individual and corporate rights*

The provisions of the Law on FCRO, which are considered generous by Ukraine’s historical standards, describe a set of individual rights. Article 3 gives every citizen a right to freedom of conscience “includ[ing] the freedom to profess, accept, and change one’s religion or convictions by individual choice.”<sup>87</sup> Parents can rear their children “in accordance with their personal convictions and attitude toward religion.”<sup>88</sup> No one can require clergy to reveal information confessed to them by believers.<sup>89</sup>

Other provisions regulate churches and religious organizations. Churches and religious organizations are separate from the state and

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83. Law on Freedom of Conscience and Religious Organizations, Vidomosti Verkhovnoyi Rady (BBP) 1991, No. 25, at 283 (enacted Apr. 23, 1991, as Statute No. 988-12) [hereinafter Law on FCRO].

84. *Id.* art. 1 (translated from the Ukrainian text by the author of this Comment).

85. *Id.*

86. *See id.* art. 32. Ukraine has ratified the major international agreements regarding religious liberty, including the United Nation’s International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, as well as the CSCE’s Vienna Concluding Document. *See* Biddulph, *supra* note 38, at 322 n.4.

87. Law on FCRO, *supra* note 83, art. 3.

88. *Id.*

89. *See id.*

state schools; they cannot participate in political parties; and they cannot “interfere in the activities of other religious organizations or, in any form, preach enmity, intolerance toward non-believers and believers of other faiths.”<sup>90</sup> But religious organizations may participate in public life, with media access equal to that of other civic organizations, and may create their own schools.<sup>91</sup> Religious educators are required to teach “in the spirit of tolerance and respect for citizens not professing any religion and for believers of other faiths.”<sup>92</sup>

## 2. *Property, legal registration, and missionary visas*

The statute contains provisions pertinent to the three salient issues discussed later in this paper: property, legal registration, and foreign missionaries. As for property, religious organizations may own various forms of portable property and may lease by contract (but not own) buildings and land.<sup>93</sup> The statute permits rotational use of the same facility by multiple religious organizations, but forbids “unauthorized seizure” of church buildings or accouterments.<sup>94</sup> It empowers *oblast* governments to settle disputes between religious organizations over religious property and real estate.<sup>95</sup>

To achieve legal status, a religious organization must register with the state by submitting a charter and a petition to the state for approval. The charter must detail the following: the type of religious organization, its religious affiliation, location, and its status in that church’s hierarchy; the property held by the religious organization; the religious organization’s right to establish enterprises, schools, media, and other religious organizations; and the mechanism for disposing of property in the event of dissolution.<sup>96</sup> This petition for registration must be signed by at least ten members of the religious organization, who are citizens of Ukraine and at least eighteen years of age.<sup>97</sup> The *oblast* government reviews the registration documents and must answer in writing within one month, or three months in “necessary cases” which require the opinion of the *oblast* leadership or

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90. *Id.* art. 5.

91. *See id.* arts. 5, 6.

92. *Id.* art. 6.

93. *See id.* art. 17.

94. *Id.*

95. *See id.*

96. *See id.* art. 12.

97. *See id.* art. 14. The members must also provide their name, address, and signature.

specialists.<sup>98</sup> The government may refuse to register a religious organization “if its charter or activity contradicts current laws,” and this decision can be appealed in court.<sup>99</sup> A court may terminate the religious organization’s operations and activities if the religious organization violates this statute or other legislation.<sup>100</sup>

The 1991 version of article 24 threw open the legal doors to the outside world. It permitted religious organizations to establish direct contacts abroad, send representatives abroad for training and conferences, import religious information and literature, and receive foreign citizens into religious educational institutions.<sup>101</sup> It imposed no mobility restrictions specific to religion beyond Ukraine’s general visa and border-related legislation.<sup>102</sup> However, the relatively permissive features of the statute were partially curtailed in a set of amendments adopted only two years later.

#### *B. 1993 Amendments to the Law on FCRO*

A set of nine restrictive amendments enacted in December 1993 reigned in the liberality of the 1991 Law on FCRO.<sup>103</sup> These amendments strengthened the state’s hand in dealing with religious organizations, particularly in the three salient legal issues of property, legal registrations, and missionary visas. The amendments confer a significant degree of discretion upon local governments, whose administrative decisions are usually the first and last word, for example, on whether a church can construct a facility or invite a missionary.<sup>104</sup> Such broad downward delegation, by which national governments avoid direct responsibility for decisions that could constitute human rights violations, can fatally frustrate enforcement of international covenants.

First, in property matters, the state accorded itself a more direct role in mediating disputes among religious organizations concerning

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98. *Id.*

99. *See id.* art. 15.

100. *See id.* art. 16 (1991 unamended version).

101. *See id.* art. 24 (1991 unamended version).

102. *See id.*

103. *See* Vidomosti Verkhovnoyi Rady (BBP) 1993, No. 26, at 277 (enacted Dec. 23, 1993, as Statute No. 3795-12) [hereinafter 1993 Amendments]. For a thorough analysis of the 1993 Amendments, see Biddulph, *supra* note 38, at 335–43.

104. *See* 1993 Amendments, *supra* note 103, arts. 16, 17, 24 (as amended in 1993).

religious property.<sup>105</sup> Second, an amendment to article 16 affected the legal status of religious organizations. It expanded the grounds on which the government can terminate a religious organization's activities to include "ritual or preaching by the religious organization that encroaches upon the life, health, liberty, or dignity of the person" and "systematic violations . . . of legislation regarding the process for conducting public religious events (services, rites, ceremonies, etc.)."<sup>106</sup> Third, the most abrupt and far-reaching changes regarded a religious organization's foreign connections. Amendments to article 24 place potentially severe restrictions on the mobility of foreign missionaries. All "foreign citizens temporarily residing in Ukraine," whatever their religious function or activities, may perform these duties "only in those religious organizations which invited them, and by the official permission of the government office which approved the registration of that religious organization's charter."<sup>107</sup>

The potential severity of this change becomes more apparent in its procedural context: foreign religious personnel cannot obtain a visa into Ukraine until they receive an invitation from a legally registered religious organization that has been approved by the corresponding government office. Even if successfully obtained, these visas are often short-term and thus require frequent renewal by approval of that same government office. Because a religious organization is registered at the level of the *oblast* government, or even city government, that government office may interpret the invitation to be territorially limited to its own small jurisdiction. Even if the national government interprets article 24 liberally, the practical autonomy at the *oblast* level yields restrictive interpretations. In short, the local government office can collar any foreign missionary with a short leash throughout his or her stay.

### C. 1996 Constitution of Ukraine

The Constitution of Ukraine, adopted on June 28, 1996, contains both general and specific provisions that apparently protect religious freedom. Chapter I ("General Principles") asserts generally that "[t]he State is answerable to the individual for its activity," and its "main duty" is to "affirm and ensure human rights and free-

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105. *See id.* art. 17 (as amended in 1993).

106. *See id.* art. 16 (as amended in 1993).

107. *Id.* art. 24 (as amended in 1993).

doms.”<sup>108</sup> “Appeals to the court in defence of the constitutional rights and freedoms of the individual and citizen” provide judicial redress.<sup>109</sup> Juxtaposed with these individual rights are assertions of state interests: to promote “the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.”<sup>110</sup>

In Chapter II (“Human and Citizens’ Rights, Freedoms and Duties”), article 24 assures equal protection for “citizens” by forbidding “privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.”<sup>111</sup> Article 26 gives “[f]oreigners and stateless persons who are in Ukraine on legal grounds . . . the same rights and freedoms[,] and [these persons] also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine.”<sup>112</sup> Article 33 enumerates “guaranteed freedom of movement”<sup>113</sup> as one of those rights, and article 36 adds “the right to freedom of association in political parties and public organisations for the exercise and protection of their rights and freedoms.”<sup>114</sup>

Besides these general guarantees, the provision that relates directly to religious liberty is article 35. It states:

Everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint religious rites and ceremonial rituals, and to conduct religious activity.

The exercise of this right may be restricted by law only in the interests of protecting public order, the health and morality of the population, or protecting the rights and freedoms of other persons.

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108. UKR. CONST. of 1996, ch. 1, art. 3.

109. *Id.* ch. 1, art. 8.

110. *Id.* ch. 1, art. 11.

111. *Id.* ch. 2, art. 24.

112. *Id.* ch. 2, art. 26.

113. *Id.* ch. 2, art. 33.

114. *Id.* ch. 2, art. 36.

The Church and religious organisations in Ukraine are separated from the State, and the school—from the Church. No religion shall be recognised by the State as mandatory.

No one shall be relieved of his or her duties before the State or refuse to perform the laws for reasons of religious beliefs. In the event that the performance of military duty is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service.<sup>115</sup>

The practical interplay between these constitutional provisions and ordinary legislation is yet unsettled. Though the Constitution asserts its supremacy as the “highest legal force” and requires that other legal acts “shall conform to it,”<sup>116</sup> future interpretation and legislation will shape the specific contours of its applicability. Basic questions about this young Constitution remain unanswered. What restrictions on legal registration of churches violate the freedom of association? What is the scope of the “claw back” exceptions that permit the State to restrict religious exercise?<sup>117</sup> When do restrictions on the internal movement of foreign missionaries violate freedom of movement? Will Ukraine’s international treaty obligations meaningfully shape the contours of these constitutional rights?

#### V. THE COMPETING IDEOLOGIES

An analysis of Ukraine’s textual commitments to religious liberty and its history of church-state relations cannot ignore the competing ideologies whose interaction has shaped public policy toward religious rights in Ukraine. Totalitarianism, nationalism, and pluralism, each espoused by disparate factions in the government and in society, reveal the divergent understanding of Ukraine’s character and destiny. The weathervane that pivots in this ideological storm indicates the future of religious liberty in Ukraine. The winds of evidence point toward gradual pluralism, despite formidable opposition.

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115. *Id.* ch. 2, art. 35.

116. *Id.* ch. 1, art. 8.

117. For a discussion of these “claw back” provisions that trump individual rights, see Richard Rezie, *The Ukrainian Constitution: Interpretation of the Citizens’ Rights Provisions*, 31 CASE W. RES. J. INT’L L. 169 (1999) (concluding that the Constitution encodes broad but unenforceable “social goals” as “positive Constitutional rights,” which seriously dilutes the enforceability of specific limits on government action).

*A. Totalitarianism*

A decade of post-Communist change has revealed that, despite reforms, totalitarianism runs deep in Ukraine. As recently as the 1998 Parliamentary elections, “recurrences of the totalitarian conscience continue” to trigger relapses into the State’s “entrenched habits . . . to use the Church for its own political interests.”<sup>118</sup> This resiliency has multiple sources and few direct counterweights.

*I. Sources of resilient totalitarianism*

The impulse toward totalitarianism is partially motivated by the perception that Ukraine’s “political pluralism,” “lack of consensus,” and “[i]nternal discord . . . contributed to uninterrupted domination by foreign countries.”<sup>119</sup> This “disappointment in Ukraine’s democratic experiment [after World War I] and a feeling of betrayal by the West” led to “the birth of integral nationalism and totalitarianism.”<sup>120</sup> This “association of democracy with chaos and the demise of earlier Ukrainian states” weighs in favor of order and against liberty.<sup>121</sup> As in politics, crises in economics correlate with totalitarian measures against religious liberty. In 1993, economic difficulty turned to disaster in Ukraine;<sup>122</sup> by year’s end, the Parliament enacted the restrictive amendments to the Law on FCRO. Similarly, Russia’s infamous 1997 law restricting religion<sup>123</sup> coincided with a year of economic collapse.<sup>124</sup>

Ukraine’s reformers express frustration that, unlike Russia in 1990, Ukraine experienced no coup or subsequent cleansing. In Russia, the hard-line leaders of the failed coup against Gorbachev were forced to capitulate to the ascendant Yeltsin, allowing him to clean house and push through a flurry of reforms. By contrast, the

118. Lyudmila Filipovich, *Church-State Relations in Ukraine*, 5 EUR. J. FOR CHURCH & ST. RES. 173, 179 (1998).

119. Prizel, *supra* note 5, at 334.

120. *Id.*

121. *Id.* at 335.

122. See Lee Hockstader, *Ukraine: A Breadbasket Becomes a Basket Case*, WASH. POST, Nov. 8, 1993, at A1; *Ukraine Over the Brink*, ECONOMIST, Sept. 4, 1993, at 45.

123. For an excellent analysis of the 1997 Russian law, see W. Cole Durham, Jr. & Lauren B. Homer, *Russia’s 1997 Law on Freedom of Conscience and Religious Associations: An Analytical Appraisal*, 12 EMORY INT’L L. REV. 101 (1998). See also Daniel Williams, *Faith-Curbing Bill Becomes Law in Russia*, WASH. POST, Sept. 27, 1997, at A16.

124. See Martin Wolf, *Russia’s Missed Chance*, FIN. TIMES, Mar. 18, 1997, at 24.

Ukrainian *nomenklatura*<sup>125</sup> embraced national independence precisely to escape these reformist pressures from Moscow and thus retain their grip.<sup>126</sup> No natural opportunity to purge the government of its reactionary elements arose, so old political cadres remained largely intact.<sup>127</sup> And what are those cadres like? One scholar has characterized the vetting of Ukrainian government officials as “anti-Darwinist self-selection, according to which the worst and the dimmest were most inclined to join the party or state apparatus.”<sup>128</sup>

Totalitarian heavy-handedness is an attitude not confined to the state. These same perverse incentives generated the cadres of the Orthodox Church, as bishops were chosen “on the basis of their servility to Moscow and their ‘iron-hand’ control over the priests.”<sup>129</sup> Orthodox leaders exhort the government to be *more* authoritarian against others. They advocate state-engineered Orthodox exclusivity over Ukraine, restrictions on other churches, and hostility to foreign missionaries.<sup>130</sup> To many Orthodox, this reflex to discriminate and prohibit poses no contradiction to reform. Instead, it seems a justified response to a bitter irony. Despite intense and prolonged persecution by the mighty Soviet state, Orthodoxy did survive. Compromised and corrupted, it still preserved the flickering flame of faith. Now liberated in an era of reform, it fears the renewal of its influence threatened by its inability to keep pace with more vibrant churches and foreign missionaries.<sup>131</sup>

## 2. Weakness of legal institutions to counterbalance totalitarianism

To create an institutional culture that meaningfully protects religious liberty, Ukraine must transcend its totalitarian history. The rule of law, civil society, and citizen empowerment are essential to this process. In Ukraine, these institutions are still in their infancy.

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125. *Nomenklatura* is the term used to describe the ruling elite of the Soviet system.

126. See Prizel, *supra* note 5, at 343.

127. See generally *id.*

128. ALEXANDER MOTYL, DILEMMAS OF INDEPENDENCE: UKRAINE AFTER TOTALITARIANISM 163 (1993).

129. Bociurkiw, *supra* note 4, at 153.

130. See *id.*; Biddulph, *supra* note 38, at 337.

131. See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 2000 ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: UKRAINE (Sept. 5, 2000) (visited May 4, 2001) <[http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/irf\\_ukraine.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_ukraine.html)> [hereinafter 2000 STATE DEP'T REPORT]; *Not Spreading the Faith*, ECONOMIST, Dec. 23, 2000, at 35.

Yet they are gradually gaining the strength to challenge totalitarianism.

For all its liberalization, post-Soviet democracy is not yet a system in which individuals assert their rights and push back the infringing state. Under Soviet rule, private rights of action and citizen-suits against the government were unknown. Government action “resulting in coercion or repression was, for practical purposes, usually without legal recourse.”<sup>132</sup> The law was not used by citizens to “resolve their disputes, assert their interests, or . . . place limits on governmental power.”<sup>133</sup> Judges, who did not enjoy lifetime appointments, were chosen and promoted for their political reliability and their grasp of “telephone justice.”<sup>134</sup>

Today, while the press and elected legislatures guard against the state’s worst abuses, courts are not yet defenders of individual liberty. The “separation of powers doctrine, the rule of law, constitutionalism, and an independent judiciary” have no roots in Ukraine because they were “incompatible with Soviet communist ideology and practice.”<sup>135</sup> The law was merely an instrument in the hands of the ruling elite to advance a political agenda. Even when official state policy toward religion is neutral, the vast state bureaucracy inherited from the Soviet era poses serious obstacles. Inert, cautious, and indifferent, its *modus operandi* is passive obstructionism.<sup>136</sup> The system rewards bureaucrats for their ability to sidestep outright confrontation and avoid blatant outrage. These incentives can raise procedural costs to levels that frustrate the most determined citizen initiatives.

Religion has the potential to reorder post-Communist society. As Lenin and Stalin well understood, religion and its institutions directly threaten the state’s omnipresence and near omnipotence. Notes one modern church-state luminary, “Religions are in effect independent centers of power, with bona fide claims on the allegiance of their members, claims that . . . will sometimes trump the claims to obedience that the state makes.”<sup>137</sup> When religion’s differ-

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132. Kim Ratushny, *Toward the “Independence . . . of Judges” in Ukraine?*, 62 SASK. L. REV. 567, 580 (1999).

133. *Id.*

134. *Id.* at 581. Also known as “telephone law,” this term referred to the manner in which political bosses controlled decisions rendered by judges. *Id.*

135. *Id.* at 577.

136. See Prizel, *supra* note 5, at 338.

137. STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF* 35 (1993).

ent voice “moves the faithful to action, a religion may act as a counterweight to the authority of the state.”<sup>138</sup>

De Tocqueville observed the following contrast: in America, religions “helped to fill the vast space between the people and the government . . . that the government might otherwise fill by itself”; but in other countries, “people relied upon the state to solve all problems, and concomitantly lost their liberty.”<sup>139</sup> Soviet society fit this description precisely. The state was the only public actor. De Tocqueville warned of the danger to democracy “if ever a government wholly usurped the place of private associations.”<sup>140</sup> The Soviet state achieved exactly that. The success of Ukraine’s nascent democracy depends upon its ability to foster an intermediate layer of civil society, generated in part by religious organizations, to mediate between citizens and state. As the most trusted institutions in Ukraine today, churches can play a critical role in engaging individuals in voluntary public life and reversing the pervasive malaise of personal inefficacy.<sup>141</sup> Indeed, it seems unlikely that any other institution can do so.<sup>142</sup>

However, even Ukraine’s dominant churches have yet to become an independent force in public life today.<sup>143</sup> They remain largely silent on the rights of women, the death penalty, arms trade, and environment.<sup>144</sup> The public discourse on pornography, family issues, abortion, and drug and alcohol abuse lacks the moral voice and guidance that churches could articulate. This disengagement of the dominant churches from the moral issues of society has concerned President Kuchma. Recently he repeated his call for the “moral and

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138. *Id.*

139. *Id.* at 36 (characterizing de Tocqueville’s observation).

140. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 513 (J.P. Mayer ed., George Lawrence trans., Doubleday 1969).

141. *See* Prizel, *supra* note 5, at 360.

142. Politics seems incapable of the task. In 1993, despite the heady new freedoms of speech and the press, 86% of the population belonged to no voluntary organization. *See* Prizel, *supra* note 5, at 358. Compared to its (also post-Communist) Eastern European neighbors, Ukraine has far fewer voluntary associations, and most of these have a religious nature. *See* Bohdan Krawchenko, *Building State and Civil Society in Ukraine*, in *TOWARDS A NEW UKRAINE I: UKRAINE AND THE NEW WORLD ORDER, 1991–1996*, *supra* note 50, at 9, 16.

143. *See* Prizel, *supra* note 5, at 349–50.

144. *See* Sorokowski, *supra* note 65, at 23.

political rehabilitation of the church as a civic institution which suffered from the totalitarian regime.”<sup>145</sup>

### *B. Nationalism*

#### *1. Religion and nationalism inextricably intertwined*

Nationalism is a strong force in Ukrainian public life, even though Ukraine has been independent, or even intact, for only a few short intervals. Nationalism and religious fervor have long been “inextricably intertwined,” particularly in the western regions.<sup>146</sup> The two concepts so overlap in the Ukrainian mind that the public still has difficulty dissociating a church’s religious legitimacy from its civil legitimacy.<sup>147</sup>

The proposition that “the religions live by resisting” may explain the persistent vibrancy of religion (and its link with nationalism) in Ukraine.<sup>148</sup> For centuries, its traditional churches have been forms of resistance and “nation-building agents.”<sup>149</sup> The Cossack rebellion, the Soviet-era Uniate underground, and the popular mass demonstrations of the 1980s all mingled the goals of religious and nationalist expression.<sup>150</sup> The Soviet criminalization of the Uniate Church in 1946 and its legalization in 1989 coincided with the suppression and resurgence, respectively, of the nationalist movement.<sup>151</sup> In this decade, the revived Uniate Church and the Orthodox Church in Ukraine have sought to wrest autonomy from Rome and Moscow.<sup>152</sup> Domestically, the alliance between Ukraine’s “pro-independence postcommunist leadership and the formerly obedient, pro-regime

145. *Ukrainian President Speaks for Moral Rehabilitation of Church*, UNIAN News Agency, June 11, 1999, (BBC Worldwide Monitoring, Kiev Unit).

146. Samuel W. Lewis, *Foreword* to *UKRAINE: A LEGACY OF INTOLERANCE*, *supra* note 17, at x.

147. See LITTLE, *supra* note 17, at 69.

148. DAVID TRACY, *PLURALITY AND AMBIGUITY: HERMENEUTICS, RELIGION, HOPE* 84 (1987). According to Tracy, “religions, at their best, always bear extraordinary powers of resistance. When not domesticated as sacred canopies for the status quo nor wasted by their own self-contradictory grasps at power, the religions live by resisting.” *Id.* at 84–85.

149. Markus, *supra* note 6, at 164.

150. See discussion *supra* Part II.

151. See Serhiy Plokyh, *Between Moscow and Rome: Struggle for the Greek-Catholic Patriarchate in Ukraine*, 37:4 J. OF CHURCH & ST. 849, 851 (1995).

152. See *id.*

church elite”<sup>153</sup> secured the 90.3 percent vote in favor of independence in the 1991 national referendum.<sup>154</sup>

## 2. *Effect of nationalism on religious liberty*

Nationalism has exerted various pressures on religion in the last decade. To the extent that early nationalist fervor in the Baltics and Ukraine pressured Gorbachev to liberalize state policy toward religion, nationalism expanded religious liberty.<sup>155</sup> Today, nationalists support even non-traditional churches if they preach, educate, and publish religious texts in Ukrainian, because the nationalists consider them useful allies in Ukraine’s cultural revival.<sup>156</sup>

But most nationalist pressures today, like those of Ukraine’s prior periods of national independence, tend to restrict religious liberty. Ukraine’s dominant churches invoke nationalism to defend their traditional religious territory against all foreign churches.<sup>157</sup> They oppose pluralistic accommodation and insist on exclusive privileges.<sup>158</sup> Nationalists oppose the UOC-MP and many MRMs on the grounds that they typically use the Russian language in church services and literature, even though Russian is the preferred language for a majority of urban Ukrainians. Nationalism pits the Orthodox Churches against each other; the UOC-KP rejects the UOC-MP as the edge of the wedge of Russian imperialism.

However, perhaps the most comforting news about religious liberty in Ukraine is what has not occurred. Religious freedom has not been subordinated to nationalism. After a decade of darkening developments for MRMs in Russia, the Ukrainian government has *not* been persuaded by similar nationalistic arguments to adopt xenophobic religious policy. It has not returned to the policy of co-opting a dominant church into a political tool. Instead, it seems to view MRMs “favorably,” because these groups “do not question the legitimacy of the state and accept the principle of church-state separation, which is a cornerstone of Ukrainian religious policy.”<sup>159</sup>

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153. Markus, *supra* note 6, at 166; *see* SMITH, *supra* note 41.

154. *See* Markus, *supra* note 6, at 166; SMITH, *supra* note 41.

155. *See* Bociurkiw, *supra* note 4, at 136.

156. *See* Filipovich, *supra* note 75, at 20.

157. *See* 2000 STATE DEP’T REPORT, *supra* note 131, at sec. I (“Government Policies on Freedom of Religion”).

158. *See id.*

159. Markus, *supra* note 6, at 172.

Though the 1993 Amendments indicated a “nationalist retreat from full religious liberty,”<sup>160</sup> the retreat has since proved only partial.

This threat of nationalism seems to be receding, as the two churches with the strongest nationalistic element (the UOC-KP and the UAOC) struggle even to maintain legitimacy.<sup>161</sup> In the early 1990s, by establishing an independent Orthodox Church (UOC-KP) to complement the newly independent state, President Kravchuk had hoped to enlist religion in the political cause of nation-building. But the scheme collapsed.<sup>162</sup> It was the closest that modern Ukraine came to establishing a state church and it backfired completely. Ideologically, the UAOC seemed susceptible to co-option as the state’s tool in the nation-building effort and thus secure preferential status.<sup>163</sup> It espouses independence from the ROC; a “Ukrainianization” of the traditions, art, music, language, and rites used in services; and the self-governing, participatory practices attributed to the primitive Christian communities.<sup>164</sup> Yet for all its nationalist appeal, the UAOC remains the weakest native church, stripped of its registration.<sup>165</sup> Unlike his predecessor, President Kuchma has kept the state at a distance from any would-be “state” church.<sup>166</sup> This neutrality comports with the “prevailing legal and political mood [that] appears to favor continued toleration” and a gradual withdrawal from church affairs.<sup>167</sup>

### *C. Pluralism*

Pluralism affords the best hope for—and the best evidence of—religious liberty in Ukraine. Though totalitarianism and nationalism have dominated Ukraine’s ideology in the twentieth century, pluralism also has deep roots and promising recent growth.

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160. Biddulph, *supra* note 38, at 322.

161. *See supra* text accompanying notes 54, 55.

162. *See* Taras Kuzio, *In Search of Unity and Autocephaly: Ukraine’s Orthodox Churches*, 25:4 RELIGION, ST., & SOC’Y 393, 401–04 (1997).

163. *See* Filipovich, *supra* note 118, at 180 (listing criteria for an “ideal” national church).

164. LITTLE, *supra* note 17, at 32–34.

165. *See infra* text accompanying notes 211, 212.

166. *See* Kuzio, *supra* note 162, at 405.

167. Krawchuk, *supra* note 52, at 66.

*1. Historical roots of pluralism*

Ironically, Ukraine's sad history of (mostly exogenous) religious repression affords reasonable hope for pluralism. Ukraine "presents a ringing endorsement of the cause of religious pluralism" in the sense that "[t]he seventy-year campaign of religious discrimination and persecution perpetrated by the Soviet government was, by all accounts, a complete failure."<sup>168</sup> The devotion to pluralism among Ukraine's progressive political forces is "born of long and bitter experience with the effects of politicized religion."<sup>169</sup> Ukraine has long enjoyed religious pluralism to a much greater degree than monolithically Orthodox Russia, thanks to its heterogeneous and influential neighbors and to its diversified demographics, which is due in part to "forcible transfers of various nationalities."<sup>170</sup>

Favorable attitudes toward pluralism emerged in Ukraine's last period of independence (1918–1921), and "the commitment to political, social, and economic equality, along with tolerance for minorities, has endured as a key element of Ukrainian concepts of democracy."<sup>171</sup> As independence neared again in 1991, it was "widely and passionately affirmed throughout Ukraine that only a genuine system of religious pluralism . . . has a chance of overcoming the legacy of intolerance and the tradition of violence bequeathed for so long to the Ukrainian people."<sup>172</sup> Today, nationwide polls consistently reflect the population's "remarkable commitment to tolerance and freedom."<sup>173</sup> In one poll, eighty-seven percent viewed religious liberty as important.<sup>174</sup>

The liberality of the 1991 Law on FCRO reflected the rush of liberalization in those years. The resultant "psychological depressurization" enabled a "euphoric passage into a pluralistic dimension [in] all aspects of Ukrainian life," by "an openness to the West, an insertion into world-wide processes of globalization through the mass media, music . . . , though the printed word, and the image."<sup>175</sup> As

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168. Lewis, *supra* note 146, at xi.

169. LITTLE, *supra* note 17, at 72.

170. Bociurkiw, *supra* note 4, at 152.

171. Prizel, *supra* note 5, at 334.

172. Lewis, *supra* note 146, at xi.

173. Prizel, *supra* note 5, at 361.

174. *See id.* The poll was conducted by the United States Information Agency in 1995. Relatedly, eighty-three percent advocated protections for ethnic minorities. *See id.*

175. Gudziak, *supra* note 50, at 51.

the Iron Curtain lifted, Ukraine encountered the rest of the world stage. A feverish rush for new models ensued, to replace the vacuum left by Soviet implosion. Ukraine's interest and experimentation with hitherto unfamiliar religious modalities generated a pluralism Ukraine had never known.

## *2. Pluralism's prospects*

Despite modest setbacks, such as the 1993 Amendments, several factors justify optimism that pluralism will remain an ideological force sufficient to secure significant religious liberty in Ukraine. First, time is on pluralism's side. Every passing year erodes Ukraine's long isolation. As Ukraine increasingly integrates with the international community, Ukraine acquires better reasons to uphold international norms of religious liberty. Internally, the growth of MRMs in Ukraine continues to outpace the dominant ones.<sup>176</sup> This momentum improves their institutional grounding, political clout, and social integration. Their contributions to society gain increasing recognition. Having shown itself unequal to the task, the government increasingly calls upon these churches to soften the social burdens of the post-Soviet transition.<sup>177</sup>

Second, peace favors pluralism. Ukraine has successfully kept its commitment to peace, despite woeful predictions of ethnic and nationalist violence. The well-publicized "conflicts" among Ukrainian churches have rarely escalated beyond a war of words. Since independence, there have been no documented killings, no burning of churches, no hostages or terrorism, and no armed conflict.<sup>178</sup> This tranquility seems remarkable, considering "the dislocation, the trauma of many decades of violence, and the passion of confessional declarations."<sup>179</sup> When civil and religious strife erupted in bloodshed in Armenia, Georgia, Chechnya, and the Balkans, some thought this a universal and inevitable consequence of Communism's collapse. But a decade later, all remains quiet on the Ukrainian front. The country appears immune from the agitation that has exploded along ethnic, economic, and religious fault lines and Ukraine presently "remains one of the most peaceful, tolerant societies in the post-

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176. See Markus, *supra* note 6, at 173; Biddulph, *supra* note 38, at 336.

177. See Gudziak, *supra* note 50, at 56.

178. See *id.* at 55.

179. *Id.*

Soviet world.”<sup>180</sup> The public’s greatest political weakness—passivity and patience—may prove to be its greatest social strength.

Third, Ukraine depends heavily on support from the West.<sup>181</sup> This aid is often explicitly (and always implicitly) contingent upon Ukraine’s respect for human rights. Ukraine’s position remains strategic and its economy defunct, so this preconditioned dependency is likely to continue. As long as Ukraine aspires to good relations with NATO and the European Union, it cannot safely disregard its international human rights commitments.<sup>182</sup> Though some government circles sympathize with the xenophobic attitudes of traditional churches, “the operative consensus appears to be that the state would be hard put to prohibit or abolish any of the . . . registered denominations without compromising its commitment to democratization before the world.”<sup>183</sup> However, local bureaucrats feel less constrained than national leaders by international commitments. This disconnect between “the two levels in the decision-making process toward the problems of the Church-state relations” frustrates local compliance with nationally endorsed international standards.<sup>184</sup> This dichotomy may pose the greatest practical obstacle to religious liberty.

Fourth, another force from abroad exerts a positive influence on religious pluralism: dislocated Ukrainians. The government is concerned with the rights of the over five million Ukrainians living in the “inner diaspora” (Russia and other formerly Soviet republics).<sup>185</sup> A policy of reciprocity between republics will likely govern issues of cultural autonomy and religious freedom. Understanding this, Ukrainians in Russia “have become some of the most avid supporters of a culturally and ethnically pluralized Ukraine.”<sup>186</sup>

Fifth, the dominant churches seem utterly unable to forge any alliance that could focus opposition against MRMs. Ukraine’s competitive pluralism must be distinguished from the cooperative ecu-

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180. Prizel, *supra* note 5, at 364.

181. See Stephen Fidler, *More U.S. Aid for Ukraine Depends on Rule of Law*, FIN. TIMES, Mar. 2, 2001, at 2.

182. See *supra* note 86.

183. Krawchuk, *supra* note 52, at 63.

184. Ploky, *supra* note 61, at 11.

185. See Prizel, *supra* note 5, at 332.

186. *Id.*

menism the West has enjoyed since the Vatican II Council.<sup>187</sup> Ukraine's churches are "busy in establishing their own identity, status, and image."<sup>188</sup> Particularly among traditional churches, "much resentment and many counterclaims" and "no previous ecumenical experience and basic education" militates against cooperation.<sup>189</sup> Though it lacks the spirit of tolerance often associated with pluralism, this discord favors pluralism by keeping the marketplace open.

## VI. ARENAS OF COMPETITION AMONG CHURCHES AND STATE IN UKRAINE

### *A. The Real Property of Churches*

The freedom to exercise religion publicly created a surge in demand for religious real estate. As *glasnost* permitted old antagonisms to revive, religious tensions were "most acutely defined" by the legal and political question of who owned what.<sup>190</sup> The dimensions of the problem are significant, and their complexity defies speedy resolution. The arena of church property development entails three principal issues: (1) how to re-open buildings formerly closed by the state, (2) where to construct new buildings and with what funds, and (3) how to determine which church has legal title to lease (not own) religious buildings.<sup>191</sup> This last issue—the determination of title—has proven most controversial.<sup>192</sup>

Shortly after the Soviets came to power, the state seized church property and leased portions of it back to churches on harsh terms.<sup>193</sup> Many church buildings were converted to museums or warehouses. In the 1980s, churches demanded that religious property be returned to churches for religious uses. New congregations could request permission to use these buildings after refurbishment. Today, as the universal lessor, the state enjoys significant control and "a

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187. See Markus, *supra* note 6, at 180.

188. *Id.*

189. *Id.*

190. LITTLE, *supra* note 17, at 56.

191. See Markus, *supra* note 6, at 177.

192. See *id.*

193. See LITTLE, *supra* note 17, at 13.

largely uncontested role” in the disputes between churches.<sup>194</sup> While President Kuchma views actual ownership of land by religious organizations as “quite realistic in the future,” the present reality is that those religious organizations fortunate enough to “have” property are still merely lease-holding tenants of the state.<sup>195</sup>

Resolving the competing claims among churches upon the returned property has proven extraordinarily complex, given the vicissitudes of Ukrainian history. It approximates adjudicating land use rights in Old Jerusalem. For example, a typical building in western Ukraine was owned *seriatim* by the Uniates, then the UAOC, and then the ROC. Determining the “rightful owner” depends on how far one turns back the clock. Under Soviet law, the ROC held an exclusive lease to any church property; it could be rescinded only by the church’s consent, by a popular vote with the church’s consent, or by its illegal use of the property—all unlikely scenarios.<sup>196</sup>

In many cases, officials have put the controversy to a popular vote. These referenda have led to peaceable transfers in areas where allegiance to one church is predominant.<sup>197</sup> But problems remain. How should close votes be resolved? Should the preferences of a building’s current parishioners and clergy take precedence? How should the state compensate for the ROC’s (and its successor UOC-MP’s) numerical advantage (a half-century of *en masse* forced conversions) when distributing property among traditional churches? What of the counterclaims that the UOC-MP, as “faithful stewards of the churches entrusted to them by the state” deserves “special consideration?”<sup>198</sup>

Local governments have tried alternative approaches to avoid a referendum or to soften its results. Some *oblasts* have arranged “joint use” timetables, by which different church congregations take turns in the same building.<sup>199</sup> Other *oblasts* have provided land to enable the minority or “losing” religious community to build an alternative structure, triggering a construction boom of thousands of (mostly

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194. Krawchuk, *supra* note 52, at 67.

195. Ukrainian Television Third Programme, *President Calls for Tolerance at Congress of Ukrainian Christian Churches*, Sept. 23, 1999 (BBC Worldwide Monitoring).

196. See LITTLE, *supra* note 17, at 44.

197. See *id.*

198. *Id.* at 58.

199. See Markus, *supra* note 6, at 178.

small) church buildings.<sup>200</sup> But this solution is not entirely satisfactory either. Real property is not fungible; certain holy structures and sites, which represent as much as a millennium of sacred heritage, are entirely unique.

Unfortunately, despite the procedure and considerations spelled out in the Law on FCRO, “[o]ften the solution is imposed arbitrarily, depending on the pressure from below and above.”<sup>201</sup> The bureaucracy’s passive obstructionism can stonewall a church. For example, Kiev city officials have not approved the Uniate Church’s prolonged petitions for even a single church building for its 30,000 members in Kiev.<sup>202</sup> This arbitrariness exacerbates long-standing popular conflicts, which occasionally erupt in vocal protests. By 2000, the number of property-related “trouble spots” nationwide had been reduced from about 500, but 300 remain.<sup>203</sup>

### *B. Legal Registration of Religious Organizations*

A second legal issue at the forefront of Ukraine’s church-state relations is the process of obtaining and maintaining legal registration for a religious organization. Registration is nominally optional but effectively a requirement. Unregistered organizations are without legal standing and thus cannot, for example, invite foreign missionaries, buy or rent property, or publish literature. For religious organizations interested in registering, the official procedures for achieving legal status are set forth plainly in the Law on FCRO.<sup>204</sup> But registration is not so straightforward in practice. Extra-legal procedures, unwarranted delays, and bureaucratic whims beset the applicant.

Because registration is granted at the *oblast* level, a religious organization registered in one *oblast* must repeat the entire process when it wishes to commence activity in a second *oblast*.<sup>205</sup> No incentive prompts local governments to honor the one- to three-month timeframe for registration.<sup>206</sup> The government officials can delay the process, insist on extra conditions, or stall for bribes. The religious

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200. *Id.* at 178.

201. *Id.* at 177.

202. See Sorokowski, *supra* note 65, at 16.

203. See 2000 STATE DEP’T REPORT, *supra* note 131.

204. See Law on FCRO, *supra* note 83, art. 14.

205. See *id.*

206. See 2000 STATE DEP’T REPORT, *supra* note 131, at sec. I (“Government Policies on Freedom of Religion”).

organization has little practical leverage to counter these extra-legal acts. Though the Law on FCRO creates a private right of action against delayed registrations, the perceived impudence of insisting on those rights in court can be politically disastrous, even if legally successful.<sup>207</sup>

Even if a religious organization does achieve registration, it remains at the mercy of the government's goodwill to effectuate many of its activities, e.g., renting a meeting facility, inviting foreign missionaries, importing religious literature, avoiding harassment by police or tax auditors, and buying or constructing a building for worship. This is no accident. The procedures require government approval and oversight of a religious organization's even routine activities.<sup>208</sup> Thus the government has arbitrary power to apply pressure against religious organizations at multiple chokepoints.

An ominous episode regarding the UOAC in the early 1990s demonstrates the state's willingness to abruptly cancel valid registrations for political reasons. In the national government's attempt to forcibly merge the UOAC into a new national church (the UOC-KP), the government revoked the valid legal registration of the UOAC.<sup>209</sup> Most congregations of the UOAC refused to merge, and thus have been without legal identity ever since.<sup>210</sup> The impact of bureaucratic obstructionism varies by degree. Though some registration applications have long languished in limbo, *oblast* governments have affirmatively denied registration to very few religious organizations.<sup>211</sup> The registration process could be much worse, and in Russia, it is.<sup>212</sup> Unlike Russia, Ukraine has thus far resisted changes in the statute that would increase the registration requirements, demand re-registration, or openly discriminate against non-traditional churches.

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207. See *supra* Part V.A.2.

208. See Krawchuk, *supra* note 52, at 67.

209. See Bociurkiw, *supra* note 4, at 147.

210. See *id.* at 148.

211. See 2000 STATE DEP'T REPORT, *supra* note 131, at sec. I ("Government Policies on Freedom of Religion").

212. See Markus, *supra* note 6, at 172. For an overview of restrictions in Russia, see John Witte, Jr., *Soul Wars: The Problems and Promise of Proselytism in Russia*, 12 EMORY INT'L L. REV. 1 (1998).

*C. Foreign Missionaries*

While property disputes emotionally polarize the dominant churches, the question of foreign missionaries (a.k.a. religious workers or clergy) provokes the most tension between the dominant and non-dominant churches. The primary issue is whether and how to issue visas to foreign missionaries. A secondary issue regards their freedom of movement within Ukraine once they arrive.

*1. Entering the doors of the nation*

Both sides of the debate—both for and against missionary entry—consider the issue vital to their survival. MRMs rely heavily on their headquarters abroad for financial and personnel support. It was foreign missionaries who introduced and provided initial leadership for nearly all MRMs.<sup>213</sup> After this foothold stage, foreign missionaries circulate as the lifeblood of these fledgling religious organizations. They establish congregations and programs and then ease the transition to local leadership. By continuing to increase membership, they cultivate broader roots for the religious organization in Ukraine.

Dominant churches could respond to this dynamism by adaptation or interdiction. So far, they have chosen the latter strategy and have hounded the government to restrict foreigners access into and around Ukraine. They resent the foreign missionaries for their effectiveness. Typically well financed, well organized, and highly motivated, foreign missionaries have won many followers in a short time. Since independence, the Orthodox Church has lost both its seventy-year monopoly and most of its state funding. This has rendered it sluggish, weak, and inexperienced in proselytism, and thus unable to compete with foreign proselytizing methods. Under the former Soviet Law on Religious Associations, religious groups were forbidden from engaging in social outreach and confined to the performance of rituals.<sup>214</sup> Until independence, priests “tended tiny flocks of die-hard faithful who . . . [braved] harassment and persecution.”<sup>215</sup> Today, this same Orthodox clergy is “called to develop overnight the skills required to foster the spiritual, infrastructural, fiscal, social, and intellectual life of their communities which passed suddenly from a mo-

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213. Filipovich, *supra* note 75, at 15.

214. See Sorokowski, *supra* note 65, at 20.

215. Gudziak, *supra* note 50, at 56.

dality of survival to a dynamic of exponential growth.”<sup>216</sup> Overwhelmed by the experience of mature foreign missionary programs in these matters, dominant churches call for closing the border, rather than engaging the society in similar forms of outreach.

The interdiction strategy of dominant churches yielded temporary results. The 1993 Amendments responded to this pressure. The granting and renewal of visas for foreign missionaries dropped dramatically the following year; yet today, missionaries once again receive visas routinely.<sup>217</sup> Dominant churches may find that an adaptation strategy is essential to survival. Because Ukraine’s renaissance has created “the most pluralistic and competitive denominational religious market in all of Eastern Europe,”<sup>218</sup> one view is that dominant churches “will have to accept the modern principle of religious freedom and voluntaristic affiliation and adopt the evangelical pastoral attitude required to survive in a free religious market.”<sup>219</sup>

A different view holds that the pressure to interdict or adapt is exaggerated because dominant churches and MRMs do not compete directly for membership. Rather, the MRMs and dominant churches occupy different parts of the playing field. The foreign missionaries of MRMs fill the void of religious needs unmet by the dominant churches. They reach out in new ways and new places to the “millions of unchurched religious believers in Ukraine.”<sup>220</sup> MRMs “swelled from the ranks of former non-believers,” the religiously inexperienced, and those who had not strongly affiliated with dominant churches.<sup>221</sup> Foreign missionaries offer a religious “product” different from dominant churches. MRMs typically foster a practical, community-oriented form of religious life, in contrast to the ceremonial, ritual-oriented religion offered by dominant churches. Foreign missionaries do create religious alternatives, but sociological

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216. *Id.* at 56–57.

217. See 2000 STATE DEP’T REPORT, *supra* note 131, at sec. I (“Government Policies on Freedom of Religion”).

218. Jose Casanova, *Incipient Religious Denominationalism in Ukraine and Its Effect on Ukrainian-Russian Relations*, 9 HARRIMAN REV. 40 (1996).

219. *Id.* at 41.

220. Sorokowski, *supra* note 65, at 22.

221. Filipovich, *supra* note 75, at 10. Geographically, this would explain the effectiveness of foreign missionaries in the southern and eastern regions, where the dominant churches had the least influence. By contrast, MRMs have penetrated little into western Ukraine, where religious consciousness and upbringing was traditionally strongest.

evidence suggests that the satisfied members of dominant churches remain there.<sup>222</sup>

Dominant churches primarily object neither to the manner of proselytizing nor the novelty of MRMs. Rather, the mere *fact* of “outright proselytizing . . . offends Orthodox leaders and violates the spirit of ecumenism.”<sup>223</sup> For example, Roman Catholic priests proselytizing in eastern Ukraine encounter opposition; the Uniate Church perceives them as a threat to its cherished role as the exclusive “bearer of Catholicism” to the Orthodox world.<sup>224</sup> This opposition is vociferously impressed upon the government. Without naming names, President Kuchma in 1996 expressed concern about the spread of “aggressive totalitarian cults,” grouping them together with “active foreign missionary organizations,” as exerting “a destructive influence on our population.”<sup>225</sup>

## 2. *Mobility within Ukraine*

Another tool to restrict foreign missionaries who do receive visas and enter Ukraine is to interpret article 24 of the Law on FCRO narrowly to severely proscribe their mobility.<sup>226</sup> This interpretation confines foreign missionaries to the territory of the religious organization that invited him or her. The law says nothing about how these territorial boundaries of a religious organization should be determined. Opponents of MRM missionaries argue that the territory of a religious organization cannot extend beyond the territory of the *oblast* (i.e., the jurisdiction of the *oblast* government that approved the foreign missionaries’ invitation).

If enforced, this interpretation would seriously disadvantage all churches without a presence in each of the twenty-five *oblasts*. In effect, it would impose a moratorium on the expansion of churches that do not already exist nationwide. MRM congregations do not spontaneously bloom and register in new *oblasts*. In practice, they bloom from seeds planted by foreign missionaries, who arrive in a new *oblast*, attract a congregation of at least ten members, and then

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222. See RODNEY STARK, *THE RISE OF CHRISTIANITY* 54 (1997).

223. Sorokowski, *supra* note 65, at 18.

224. *Id.* at 16.

225. *Kuchma Concerned About Spread of “Totalitarian Cults,”* Interfax News Agency, Moscow, Nov. 19, 1996 (BBC Summary of World Broadcasts).

226. See Biddulph, *supra* note 38, at 340.

petition for legal status. A restrictive interpretation of article 24 would prevent this initial entry into the *oblast*, requiring instead that the foreign missionaries receive an invitation from a congregation that does not yet exist.

To date, inconsistent interpretation and enforcement of article 24 points to no clear government policy.<sup>227</sup> Only the Constitutional Court of Ukraine can definitively determine whether this interpretation is permissible, but the aforementioned indelicacy of litigation makes this unlikely in the near future. Even when no interference is intended by the state, official attitudes reveal a “‘profound theoretical ignorance’ of Church life, and a ‘lack of sensitivity to the dynamics of Church life, religious life, [and] even individual spirituality in implementing policy.’”<sup>228</sup> The importance of missionary mobility within Ukraine is one visible example of this phenomenon.

## VII. CONCLUSION

Ukraine faces enormous challenges at present: economic depression, political paralysis, and endemic corruption. In matters of religious liberty, however, Ukraine has reached a crossroads and seems headed in a promising direction. A decade of new openness has catalyzed an unprecedented religious renaissance. Unlike many post-Soviet reforms imposed from the top down, this renaissance has broad support from a citizenry that trusts the church and believes in religion as a regenerative social force. A country long dominated first by Orthodox and Uniate Christianity and then by Soviet atheism, Ukraine has now absorbed a range of religious perspectives. It has rejected both an attempt to establish a state-manipulated church and an effort to mimic Russia’s recent menacing measures toward so-called “new religions.”

Rather than restore the dominant churches as ethnoreligious monoliths or as tools of government control, the renaissance has transformed religion into a diverse and partially autonomous force in society. Nascent social initiatives by churches suggest the beginnings of an independent layer of civil society. Though numerically small, MRMs have led this trend through charity assistance, family support, education, and publication of religious literature. The religious mar-

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227. *See id.* at 341.

228. Sorokowski, *supra* note 48, at 14 (quoting Dr. Borys Gudziak, vice-rector of the Lviv Theological Academy).

ketplace of missionaries and tracts has splintered the oligarchy of traditional churches.

Legal protections for religious exercise and institutions have been secured by Parliaments, legislation and treaties, and Ukraine's new Constitution.<sup>229</sup> The Constitution contains guarantees against discrimination and for freedom of movement, association, and conscience. It makes explicit the right of individuals and organizations to worship and engage in religious activities, subject to considerations of public order, health, morality, and the rights of other persons. Church and state are to remain separate. The organic Law on the Freedom of Conscience and Religious Organizations enumerates basic rights for individuals and institutions. Individuals are free to profess, accept, and change their convictions. A religious organization can seek legal registration with the state, which entitles it to lease buildings and land and to invite foreign missionaries. Amendments in 1993 curtailed the statute's liberality by restricting foreign missionaries and expanded the grounds for terminating a religious organization's activities.

The implementation of these constitutional and statutory rights, however, will remain contingent upon the outcome of the ideological struggle underway among totalitarianism, nationalism, and pluralism. Ukraine's Soviet political cadres, with their views and instincts, remained largely intact. Against these totalitarian methods and bureaucratic obstructionism stand the rule of law, civil society, and citizen initiative, but these are still infant institutions. The dominant, traditional churches fear their revival threatened by the more vibrant foreign churches, and thus have adopted a territorial, nationalistic spirit in calling for restrictions against their foreign rivals. But in its religious policy, the Ukrainian government has not yet yielded to nationalist passions, despite their significance in each of Ukraine's periods of independence. The government's one attempt at establishing a state church boomeranged, and separation has increasingly characterized church-state relations since. Despite its historically thin roots, some form of pluralism will likely prevail in Ukraine. Its citizenry has proved consistently committed to diversity and tolerance. The momentum generated by a decade of Ukraine's peaceful transition and

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229. For an analysis of Ukraine's Constitution and religious legislation, see discussion *supra* Part III.

its dependence on Western support and Russian goodwill validate a policy of pluralism.

Ukraine's commitment to these legal guarantees of liberty, which promote pluralism at the expense of totalitarianism and nationalism, are being tested in three primary legal disputes: religious property, legal registrations, and foreign missionary visas.<sup>230</sup> The dominant churches disagree sharply about which institution holds legal title to the more prominent buildings and lands. However, the state has settled many contested sites through local referenda, joint-use timetables, and the construction of new buildings of worship for outvoted or expanding religious groups. Despite the statute's straightforward procedures for legal registration, discretionary additional procedures and bureaucratic caprice enable the government to keep religious organizations in constant suspense, without legal repose. The effectiveness of foreign missionaries has mobilized traditional churches to urge the government to restrain their entry and mobility around Ukraine, rather than engage in similar forms of social outreach.

On the whole, however, these three primary legal issues indicate favorable winds. Property disputes are in decline, missionaries regularly gain entry, and the overwhelming majority of new congregations successfully register every year. Ukraine concludes its first decade of independence with significant religious freedom and pluralism intact. Its religious renaissance, symbolized by icons and missionary tracts, has propelled legal and social transformations that warrant guarded optimism for religious liberty in Ukraine.

*John Moroz Smith\**

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230. See discussion *supra* Part VI.

\* This Comment is dedicated to the many believers of Ukraine who kept alive the flame of faith and freedom against the harshest persecutions of a Soviet regime that would tolerate no other gods before it. I thank Professor W. Cole Durham, Jr., for his scholarship, mentoring, and devoted advocacy of religious liberty for all peoples. I am grateful to Professor Wilfried M. Voge, Professor Lyudmila Filipovich, and especially to my wife and classmate Hannah Clayson Smith for their insightful comments and faithful support.

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