

# All Religions Are Equal, But Some Are More Equal Than Others: Russia's 1997 Restrictive Law of Religious Practices

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**O**n 27 September 1997, Russian President Boris Yeltsin defied a plea from U.S. Vice President Albert Gore and signed into law harsh restrictions on religions other than the Russian Orthodox Church in Russia. The law, entitled "Freedom of Conscience and Religious Association,"<sup>1</sup> found overwhelming support from all elements in Russian political circles. Demonstrating this support, the State Duma, Russia's lower house, voted 358 to 6 in favor of the bill.<sup>2</sup> Russia's upper house, the Soviet of the Federation, voted unanimously, 137-0, in favor.<sup>3</sup> Faced with such widespread popular support, Yeltsin had no real political choice but to sign the legislation.

The passage of this law demonstrates the difficulty of establishing protection for the rights of minorities in Russia. The guarantees of human rights in the Russian constitution are weak and create an opportunity for political interests to curtail rights and freedoms in Russia. One political movement, Russian nationalism, has already risen to take advantage of the opportunity to impose restrictions on religious freedom. This serves as a warning that other such future restrictions are possible.

In this article, I focus on the Russian law on religion to explain how the Russian constitutional system can be used to curtail individual rights and freedoms. I will discuss human rights in the Russian constitution of 1993; the contents of the Russian law on religion and how the law appears to conform to the constitution; and the connection between Russian nationalism and the Russian Orthodox Church. It is the rise of Russian nationalism, as expressed through orthodoxy, that has led to the restriction of religious rights in Russia.

## Protection of Human Rights

The Russian constitutional system fails to protect the rights of minority interests from an overbearing majority because it does not prevent the accumulation of excessive power. As a result, human rights stand on precarious ground. A major-

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ity can take control of the organs of the Russian Federation,<sup>4</sup> and use its power to abridge the rights of minority interests.

### **The Danger of the Tyrannical Majority**

Democracy alone does not promote the greatest amount of freedom for its citizens. A pure democracy can actually promote erosion of the freedom of those who find themselves in the minority. James Madison, one of the Founding Fathers of the United States, warned in *Federalist* No. 10 of the potential tyranny of the majority when debating the merits of the U.S. Constitution. When a majority rules without constraint, it can sacrifice the public good and the rights of other citizens. Chief Justice John Marshall recognized this danger, asserting that the role of the U.S. Constitution is “to shield” the people “from the effects of those sudden and strong passions to which men are exposed.”<sup>5</sup> Thus, the framers of the U.S. Constitution sought to protect the interests and freedoms of those in the minority while promoting majority rule.

Freedom is protected by placing limits on the ability to exercise power. A constitutional system that secures freedom does so by creating impediments to the accumulation of power.<sup>6</sup> U.S. Supreme Court Justice Blackmun has noted that the U.S. Constitution seeks to combat tyranny by prohibiting the accumulation of excessive power in one branch of government.<sup>7</sup> To ensure continued freedom, the U.S. Constitution places restrictions on the exercise of power, to prevent one group of people from easily assuming power and using the institutions of government to impose their will without constraint.

### **Human Rights in the Russian Constitution**

The current Russian constitutional system, although a democracy, fails to protect adequately the freedoms of all Russians because it allows a majority to accumulate power and infringe on minority interests. The 1993 constitution grew out of the political crisis caused by an impasse between two branches of the Russian Federation. President Yeltsin faced opposition to his economic reform program from the Russian Congress of People’s Deputies. The Russian legislative branch, which had not faced elections since the collapse of the Soviet Empire and was staffed with holdovers from the era of Communist domination, blocked Yeltsin’s attempts to implement reforms and barricaded themselves in the Russian White House. Yeltsin responded to the rebellious deputies with force and dissolved the legislative body.

The Russians adopted a new constitution in December 1993 after the crisis ended. To ensure that his reform programs would not be blocked by a contrary legislative agenda, Yeltsin created a constitutional system that accumulated power in the hands of the president.<sup>8</sup> In addition, the constitution facilitated the infringement of civil rights by failing to place adequate protections on the rights on Russian minority interests.

The Russian constitution appears to protect the liberties of the Russian people. Chapter 2 lists a number of individual rights and freedoms, ranging from the right to free thought and speech to the right to affordable, low-cost housing. Addi-

tionally, Chapter 2 cannot be amended as easily as other portions of the constitution. Chapters 1, 2, and 9 can be amended only by a three-fifths vote of both the Soviet of the Federation and the State Duma. If it attains such a vote, a proposed amendment is submitted to a Constitutional Assembly. The assembly may revise the constitution either by a two-thirds vote or by submitting the revisions to a national referendum. The Russian constitution thus gives the appearance of protecting individual rights.

However, a closer look reveals otherwise. Many of the rights mentioned in chapter 2 are only qualified rights. For example, although a person is entitled to protection against intrusion into a dwelling, the constitution holds that exceptions can be created by federal law or by court decision. Similarly, article 29(4) states that the right to seek or disseminate information is limited to "any legal method." Furthermore, article 55(3) of the constitution allows the rights listed in chapter 2 to be infringed "to protect the foundations of the constitutional system, morality and the health, rights and legal interests of other individuals, or of ensuring the country's defense and the state's security." Many of the rights listed in the constitution can be abridged by mere legislative action. This effectively abrogates the restraints placed on amending this section of the constitution, as rights can be altered and reduced without resort to the formal procession of constitutional revision.

Although the Russian constitution does provide religious freedom, that freedom can easily be infringed without violating the letter of the constitution. Chapter 2 enshrines the right to religious freedom:

Each person is guaranteed freedom of conscience and freedom of religion, including the right to profess any religion individually or together with others or not to profess any, and freely to choose, hold and disseminate religious and other convictions and to act in accordance with them.

However, religion is closely tied to morality. Since individual rights can be abridged to protect the morality of other individuals, any restriction on religious freedom can be justified by a legislative finding that a threat to Russian morality exists. The Russian legislature can then place restrictions on religious freedom within the Russian constitutional structure.

### **The Russian Religious Law**

The Russian constitutional structure allows for the passage of a law as restrictive of religious rights as the Russian religious law. The Russian religious law does not appear to offend Russian constitutional principles because it does not restrict the ability of the individual to hold or profess a belief. Rather, it works on the institutional level, regulating the actions of religious associations.

The Russian religious law begins by repeating the guarantees of the Russian constitution. Article 2.3 of the law declares that "[n]othing in the law . . . may be interpreted in such a way as to diminish or limit the right of man and citizen to freedom of conscience and freedom of creed." Echoing the constitution, article 3.1 then states that the Russian Federation guarantees the freedom to choose and disseminate religious convictions.<sup>9</sup> By the language of the law, this freedom may

be restricted only to protect “the constitutional system, morality, health, or the rights and legal interests of man and citizen, or of securing the defense of the country and the security of the state.”<sup>10</sup> Thus, the text of the religious law begins by seemingly reaffirming the right to profess one’s religion freely.

The law then divides religious associations into two groups: religious groups and religious organizations. A religious group is “formed for the goals of joint confession and dissemination of their faith.” The religious group may engage in activities without registering with the state. However, a religious group does not possess “the legal capabilities of a legal personality.” Additionally, a religious group must inform local authorities of its formation.

A religious organization also forms “with the goals of joint confession and dissemination of their faith.” A religious organization must register with the state and is recognized as a legal personality. To apply for status as a religious organization, a religious group must have ten or more citizens of the Russian Federation as founders, and have existed in the territory of the Russian Federation “for no less than fifteen years.” Thus, a religious group may become a religious organization and enjoy a legal personality. However, there are substantial hurdles to this process.

The language of the law does not deny rights to religious groups. Rather, the law creates special entitlements for religious organizations. For example, a religious organization may “maintain religious buildings and equipment and other places and objects specially designated for worship services.” Within these religious buildings the religious organization may conduct services “without hindrance.” Additionally, the law grants religious organizations the right to conduct religious rites in such institutions as health centers, hospitals, children’s homes, prisons, and homes for the elderly. Thus, it would appear as though a religious organization would be free from state interference when conducting religious services within its own buildings and would have access to certain governmental buildings.

The Russian religious law also grants special rights with respect to the expression of religious beliefs. Religious organizations may “produce, acquire, export, import and distribute religious literature.” Religious organizations may also create “enterprises” to produce “liturgical literature . . . for religious services.” Other rights granted religious organizations include the rights to create charitable organizations, create institutions for professional religious education, own buildings and property, and create religious schools.

These are all rights denied religious groups. However, the Russian religious law does not do so affirmatively, but by creating special rights for religious organizations.

These legal requirements have a large impact on religious associations originating in Western states. The Roman Catholic Church, for example, while possessing a long history in Western Europe, has not been practicing in Russia for more than fifteen years. Thus, Catholics may not establish religious schools, own religious buildings, or even import literature from outside of Russia. By denying such rights to Catholics in Russia, the Russian Federation has effectively placed huge barriers in the path of the Roman Catholic Church to profess its faith and

attract more Russian followers. Indeed, with the fifteen year requirement, the only religions that can qualify today as religious organizations are the Russian Orthodox Church, Judaism, Buddhism, and Islam.

### **Analysis under the Russian Constitution**

Although the law is restrictive of the rights of religious associations, it can be defended as constitutional in Russia on two grounds. The first is that the law does not infringe the rights of individuals. The second is that the law is meant to protect the morality of the Russian people.

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*Restrictions on Associations, Not Individuals.* First, the language of the Russian constitution protects the right of *individuals* to profess a religious belief. This constitutional protection is not extended to religious association. Technically, the law does not infringe on the rights of the individual. Under the law, any individual may freely choose a religious

conviction and profess it. Rather, the law is aimed at regulating the actions of the religious associations.

Additionally, the special rights granted to religious organizations are only ancillary to practicing one’s faith. Owning buildings and printing literature may assist a religious association in worshiping, but an individual can profess a faith without the aid of such things. In this way, while denying religious groups certain rights, the law does not stop individuals from professing their religious beliefs.

*Russia’s Perceived Moral Crisis.* Second, the law can be defended as a measure necessary to protect the morality of the Russian people. The preamble of the law recognizes “the special contribution of Orthodoxy to the history of Russia and to the establishment and development of Russia’s spirituality and culture.” Religion sets a moral code for its followers. A threat to the Russian Orthodox Church, therefore, can be viewed as a threat to Russian morality.

The Russian Orthodox Church has perceived the current situation in Russia as a threat to morality. Rival Christian sects, such as Roman Catholicism, Lutheranism, and Baptism, have all established themselves in Russia.<sup>11</sup> The patriarch of the Russian Orthodox Church saw this growth in alternative Christian sects as a threat to orthodoxy.<sup>12</sup> Indeed, foreign missionaries have been seen as a threat not only to Russian orthodoxy, but also to Russian heritage.<sup>13</sup> Given this perceived threat to the Russian moral fabric, a law restricting foreign religious incursions would seem to fit into the exception carved into the Russian constitution allowing the law to restrict religious rights.

### **Orthodoxy and Russian Nationalism**

Legal restrictions on religious rights are possible within Russia because of the position of the Russian Orthodox Church as an integral part of Russian nationalism. The Orthodox Church has not only played a large role in Russian history but has also traditionally allied itself with the government. The social and economic chaos that followed the collapse of the Soviet empire served to strengthen the position of the Orthodox Church. The religious restrictions in Russia therefore spring directly from the convergence of the tight connection of orthodoxy to Russian nationalism with a constitutional structure that allows a majority to infringe on the rights of minority interests.

### **Historical Connections Between Orthodoxy and Russian Nationalism**

The Russian Orthodox Church has historically played a large role in Russian nationalism. To follow Eastern orthodoxy was a conscious choice made by the rulers of the Kievan state around the tenth century, A.D. At the time the choice was made, Byzantium, the second Rome or center of Christianity, was at the height of its glory.<sup>14</sup> Russian orthodoxy played a vital role in unifying the Russian people to overthrow the Mongols. This helped in creating an alliance between the Russian Orthodox Church and the leaders of the Russian state at an early stage in history.<sup>15</sup>

The alliance between the Russian Orthodox Church and Russian leaders continued when Russia had won its independence from the Mongols. Moscow emerged as the capital of the new Russian state in the thirteenth century, and the head of the Russian Orthodox Church made Moscow its seat.<sup>16</sup> After the fall of Byzantium, Moscow became known as the “third Rome.” To the Russian people, this signified Moscow’s position as the new center of Christianity. Indeed, Ivan the Great, the Muscovite prince who defeated the Mongols, took the title of tsar, which is a Russian form of the word *caesar*.<sup>17</sup> Thus, from the early stages of its history, the Russian Orthodox Church has played a central role in defining what it means to be Russian.

The centrality of Russian orthodoxy to Russian nationalism continued and manifested itself in Russian foreign policy. Russia played a large role in the defeat of Napoleon in the beginning of the nineteenth century. From the ashes of a wartorn Europe, the leaders of Great Britain, Prussia, Austria, and Russia created the Concert of Europe, a period of European stability and peace. To cement this peace in Eastern Europe, Tsar Alexander I of Russia established the Holy Alliance to promote Christian values of justice, charity, and peace among its members.<sup>18</sup> The principal members were Russia, Prussia, and Austria. The Holy Alliance became a vehicle to repress liberal sentiments and ideals.<sup>19</sup>

During the nineteenth century, Russian orthodoxy increasingly became a point of conflict between Russia and other imperial powers, such as Austria and the Ottoman Empire. Russian nationalism and foreign policy during the period were heavily influenced by the Pan-Slavic movement, which viewed the entire Slavic population, not only the Russians, as part of a single nation. It was perceived that all Slavs were descended from the same ancestral stock; the Slavic people all

spoke related languages, as well. But the strongest connection binding the Slavic people together was religion. Most Slavs, with Poland being a large exception, professed the Orthodox Christian faith. By this time, Russia had assumed leadership of the Orthodox Church. The shared religious faith, as well as the linguistic affinity, fostered the perception of a shared heritage between the Russians and the other Slavic peoples. The Panslavic movement sought to unite all Slavs in a single political voice under Russian leadership.

Both Austria and the Ottoman Empire spanned large territories within which were Slavic groups who followed orthodoxy. During this time, Russia declared itself the protector of all followers of orthodoxy, even those located outside its borders. Because this declaration challenged the sovereignty of Austria and Turkey, Panslavism created friction in Russia's foreign relations. The alleged mistreatment of Orthodox Christians by the Ottoman Turks led Russia to fight both the Crimean and Russo-Turkish Wars in the nineteenth century. Thus, the centrality of orthodoxy to Russian nationalism had gone so far as to ignite two wars in Europe.

Specifically, the Russo-Turkish War of 1877–78 was an expression of Russian religious nationalism. Russia responded to a crisis that had erupted in the Balkans in the 1870s when Serbia and Bulgaria rose in revolt against Turkey. News of Turkish atrocities against the subjects in revolt spread across Europe. With Europe disgusted at the actions of Turkey, Russia took the opportunity to intervene on behalf of Bulgarians. Panslavism pushed Russia into an aggressive path. The Russian call to arms was driven by nationalist ambitions fueled by religious fervor, which would cost the Ottoman Empire territory.

The Russian policy reflected the rising influence of Panslavism on the Russian population. Panslavism served as an outlet for the Russian people to express their deep nationalist and religious pride. The Panslavs saw the Slavic culture as a unique, superior heritage and sought the union of all Slavs into a single political unit, with Russia as the Slavic great power.<sup>20</sup> Russian policy in the Russo-Turkish War, therefore, took on religious overtones. The Russians wanted to replace Turkish influence over the Slavs with their own, guided by Orthodox principles.

Connections between the state and the Orthodox Church appear to have continued through the period of Communist dictatorship. It has been alleged that during the Soviet period, Patriarch Alexei II served as a KGB informer. Currently, the patriarch employs a former official of the Soviet Council for Religious Affairs as a legal advisor, fueling allegations that the Russian Orthodox Church collaborated with the Communist Party during the Soviet repression.<sup>21</sup>

Russian orthodoxy appears to influence even modern Russian political thought, as can be seen from the work of Alexander Yanov. Yanov alerts the world to the reemergent ideology of the Russian Right, called "the Russian Idea." The Russian Idea claims that parliamentarianism has destroyed the West, that the West is backward in the way it pursues its goals because its system holds that for a man to be free internally, he must first be free politically. Rather, true freedom is spiritual freedom. Indeed, the historic despotism of Russian governments has interfered with the spiritual development of the Russian people because it has oppressed their dignity

and spirituality.<sup>22</sup> Two key aspects that drive the Russian Right are its imperialist nature and the large role of the Russian Orthodox Church. The state should be authoritarian to allow the people to concentrate on their spirituality.<sup>23</sup> The Russian Right opposes the process of Westernization. The movement strives to maintain Russia's uniqueness, which is based in part on the Russian Orthodox Church.<sup>24</sup> What Yanov describes is a very powerful rise of nationalism in Russian society based on the spirituality of the Russian Orthodox Church.

### **The Reemergence of Russian Orthodoxy**

When economic changes occur rapidly in a society, there is often a gap between the expectations of its members and the realization of better economic conditions for the individual. The members of a rapidly changing society need some form of motivation to assure them that progress will result in some good.<sup>25</sup> During times of rapid economic change, societies are most vulnerable to radical philosophies, because social values that supported the old economic order are being reassessed.<sup>26</sup>

Russia now finds itself in such a period of rapid economic change. The collapse of the Soviet empire has shown the bankruptcy of socialism. Over seventy years of Marxist-socialist policies ravaged the Russian economy, leaving deep economic scars for the Russian people to confront.

Russia has responded by a rapid transformation to a market economy. The initial proponents of capitalism in Russia created great expectations for the economic liberation of the Russian people. However, those expectations have not been met. Many of the benefits of the transformation have been felt only by a select few. Corruption has plagued the Russian transformation and led to criminal elements in Russia realizing much of the economic benefit.

Modern Russia thus presents a society vulnerable to radical ideologies. This helps to explain, at least in part, the rise of Russian nationalism since the fall of the Soviet Union. Nationalism looks to recapture the glory Russia experienced as a great imperial power and as a world superpower under the Soviet rule. The Russian Orthodox Church has been tied with Russian nationalism, and as Russia struggles to find its place in the world, orthodoxy has once again found a pre-eminent place in Russian politics.<sup>27</sup>

A resurgence of Russian orthodoxy in Russian politics is apparent. Since 1992, the Russian government has made expenditures to benefit the Orthodox Church. One such expenditure has been the rebuilding of an Orthodox cathedral in Moscow that had been demolished by Stalin.<sup>28</sup> Additionally, Russian politicians have courted the support of Russian Orthodox Christians. In the 1996 presidential elections, for example, Zyuganov, the Communist candidate, tied Russia's national interest with the support of the Russian Orthodox Church. Through the Orthodox Church, Russia could rebuild its position as a powerful state.<sup>29</sup>

With the new centrality of orthodoxy in modern Russian politics, the Orthodox Church is in a position to influence Russian public policy and legislation and to take advantage of the Russian constitutional system to restrict the rights of other religious associations.



### Conclusion

The Russian constitutional system provides only weak protection for human rights, leaving the rights of minority interests in Russia at the mercy of a tyrannical majority. The passage of the Russian religious law is a result of this weak protection of human rights. Technically, the law does not infringe on the right of the individual in Russia to profess a faith freely, but it severely regulates religious associations. The effect of the law is to deny religious groups the right to engage in activities that would attract more Russian followers.

The Russian religious law is the result of a perceived threat to Russian morality because the Russian Orthodox Church views the missionary work of foreign religious associations as a dangerous encroachment. The rise of Russian nationalism after the fall of the Soviet Union gave the Russian Orthodox Church the opportunity to use the Russian constitutional structure to restrict foreign religious associations.

Russia's problems stem from its weak constitutional structure, which provides inadequate protection for human rights. Unless the constitution prevents the excessive accumulation of power, the rights of minority interests in Russia are not secure. The passage of the Russian religious law has brought to light this major deficiency in the Russian constitutional system.

### NOTES

1. RF Law, Freedom of Conscience and Religious Associations, 22 September 1997 [hereinafter Russian religious law].
2. David Hoffman, "Russian Legislators Revive Bill Restricting Religion; Yeltsin Vetoes Earlier Version," *Washington Post*, 20 September 1997, A15.
3. David Hoffman, "Russia Passes Bill Curbing Some Faiths; Gore's Pleas Ignored; Court Test Foreseen," *Washington Post*, 25 November 1997, A1.
4. Within the Russian political system, the word "government" possesses a more constricted meaning than in the U.S. system, referring solely to the executive branch. When I refer to all of the organs of the Russian state, I will use the term "Russian Federation."
5. *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 138 (1810).
6. Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs* 76 (1997): 22.
7. *Mistretta v. United States*, 488 U.S. 361, 381 (1988).
8. Molly Warner Lien, "Red Star Trek: Seeking a Role for Constitutional Law in Soviet Disunity," *Stanford Journal of International Law* 30 (1994): 110.
9. This language in this provision mirrors almost verbatim the language of Article 28 of the Russian constitution.
10. The language of this provision mirrors almost verbatim the language of Article 55(3) of the Russian constitution.
11. Daniel William, "Faith Curbing Bill Becomes Law in Russia; Restrictions on Religion Enacted in Face of Global Criticism," *Washington Post*, 27 September 1997, A16.
12. *Ibid.*
13. Daniel Williams, "Russia's Crisis of Faith; Orthodox Church Debates Its Role as Post-Communist Glory Fades," *Washington Post*, 12 August 1997, A14.
14. John Lawrence, *A History of Russia* (New York: Penguin, 1978), 32.
15. W. Bruce Lincoln, *The Romanovs* (New York: The Dial Press, 1981), 7.
16. Lawrence, *A History of Russia*, 86. The head of the Russian Orthodox Church at that time was known as the metropolitan bishop. Eventually, Russia established the patriarch who heads the church today.

17. *Ibid.*, 89.
18. Harold Nicolson, *The Congress of Vienna, A Study in Allied Unity: 1812–1822* (San Diego: Harcourt Brace Jovanovich, 1946), 250.
19. *Ibid.*, 251. In this sense, “liberal” means a political philosophy promoting democracy, and individual human rights. It is contrasted with the concept of classical conservatism, which promoted monarchical or oligarchical rule. “Liberal” is not being used in the same sense as it is in current American political campaigns, which is to label a candidate as supporting government spending on welfare programs.
20. Carlton J. H. Hayes, *Essays on Nationalism* (New York: Macmillan, 1926), 150.
21. Lawrence A. Uzzell, “A Show of Bad Faith; Behind Yeltsin’s Betrayal of Religious Freedom,” *Washington Post*, 2 November 1997, C1.
22. Alexander Yanov, *The Russian Challenge and the Year 2000* (New York: Basil Blackwell, 1987), 21.
23. *Ibid.*, 25.
24. *Ibid.*, 78–79.
25. Alexander Gerschenkron, *Economic Backwardness in Historic Perspective* (Cambridge, MA: Belknap Press, 1962), 24.
26. *Ibid.*; Walt Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge, England: Cambridge University Press, 1960), 7–10.
27. David Hoffman, “Zyuganov’s Goal Is Russia’s Glory; Presidential Front-Runner Blames West for Decline,” *Washington Post*, 13 May 1996, A1.
28. Lee Hockstader, “Russian Orthodox Church Is Feeling Rebirth Pains; Critics Accuse It of Coziness with Government,” *Washington Post*, 15 April 1996, A1.
29. Hoffman, “Zyuganov’s Goal Is Russia’s Glory.”