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THE STATE, THE SCHOOLS, THE PRESS, AND MATTERS OF ECCLESIOLOGY: MAKING THE AMERICAN EXPERIENCE RELEVANT FOR UKRAINE

Introduction

Modern Ukrainian society is faced with a dilemma. Currently, there are four major contenders for the designation, "national church," each claiming to be the authentic religious voice of the peoples of Ukraine--the Ukrainian Orthodox Church (Moscow Patriarchate), the Kievan Patriarchate (Ukrainian Orthodox Church), the Ukrainian Autocephalous Orthodox Church, and the Eastern-Rite (Greek-Catholic) Church. In addition, other religions and new religious movements now operating on the territory of Ukraine advance their own claims to be the "true" faith. Government officials and media reporters are both placed in the unenviable position of having to assess and adjudicate the various claims advanced by different religious groups and competing jurisdictions within the same church. Some of the areas include:

1) Adjudication of property disputes
2) Claims to use state monuments for religious purposes
3) Invitations to state and societal functions for religious leaders
4) Media coverage of the various churches

Speaking about the condition of religion in Ukraine, President Leonid Kuchma noted in April 2001:

The church teaches us to treat one another with understanding, love and tolerance..... Dialogue is what is needed generally, and everyone acknowledges that we have achieved a lot in the past few years in resolving the main task of facilitating the unification process among the three Orthodox churches that exist in Ukraine. Do you know what the dispute among them was like? It was a dialogue of the deaf. Now the war is over, and the government can take some credit for that. We took the path of returning church buildings to the churches' ownership. Representatives of all confessions believe that no other country has what we now have in Ukraine: We really are observing the freedom of religion prescribed in the Constitution.[1]

The role of the media and of the schools, two of the main components in the construction of civil society, is to facilitate this process of dialogue, even when the various churches and jurisdictions themselves are unwilling to engage in this process.

Historical Legacy

Ukraine is heir, as so many other European state are, to a legacy of church-state relations by which only one church was designated as the official or state religion. In Ukraine's case, however, the **identity** of that church has shifted historically, depending on the internal and external political factors governing Ukraine's existence. Thus, Ukraine has a complicated legacy: culturally, it conceives of itself as a monoconfessional state, but because of its past has many legitimate claimants to the role of "national" church, thus creating conditions for pluralism. Many of you are already very familiar with this history; I provide this summary only as a way to illustrate some of the issues I wish to discuss in my paper.

The Church Statute (Ustav) of Great Prince Vladimir presupposed that, following the Baptism of Rus' in 988, all people were united into a single Church, defined by its union with the Patriarchate of Constantinople and by its adherence to the canonical and liturgical norms set down in the Greek *nomocanon*. All the peoples of Rus' were Christian, by virtue of the "choice" made by Vladimir and his council, after receiving the reports of the emissaries dispatched to observe the various great religions of the world, and all Christians in Rus' were united into a single Church. By separating from this Church, people became, in the eyes of the law, "heretics" and thus excluded from the community.

As the political situation of the lands which form Ukraine changed over the centuries, however, so did the understanding of what constituted "the Church" in the lands of southern Rus'. The lands of southwestern Rus', following the Mongol invasions, came under Lithuanian suzerainty; in 1458, Grand Duke Casimir ordered that the Orthodox dioceses of his lands be

[1] "No More Time for Playing the Guitar," *Rossiiskaia Gazeta*, April 18, 2001, cited in *World News Connection: Central Eurasia*, FBIS-SOV-2001-0419 (April 19, 2001).

separated into a separate jurisdiction, remaining under the direct supervision of the Patriarch of Constantinople from those in northeastern Rus', grouped around the Metropolitan of Moscow, which after 1448 became independent of Constantinople. In 1596, after the merger of Lithuania and Poland into a single entity, Sigismund III, King of Poland, threw the support of the state behind that element of the Church which desired union with Rome. Thus, in the lands of Ukraine controlled by Poland, the "Uniate" (Eastern-Rite Catholic) Church was declared to be the only legal Church, while the Orthodox Church was outlawed.

Ukraine thus underwent its first major religious conflict, between those supporters of the Union, backed by the full power of the Polish state, versus those who chose not to enter into the union, and who increasingly rallied behind the Cossacks, seeking, if not autonomy for Ukraine, full independence from Poland. Over time, the Ukrainian Cossacks decided that their interests would best be served by alliance with the tsardom of Muscovite Rus'. The Treaty of Pereislavl (1654) remains controversial; did it create an alliance between Cossacks and Muscovite Rus', or provide for the absorption of the Cossacks into the Russian tsardom? At any rate, in 1686, by agreement between the Churches of Moscow and Constantinople, Constantinople ceded jurisdiction over the dioceses of southern Rus' to the Patriarchate of Moscow. Politically, Ukraine remained divided, with East Ukraine a part of the Russian state, and areas of Western Ukraine remaining under Polish overlordship. When Poland disappeared as a state, Russia acquired more of Ukraine, except for the portions acquired by Austria. By imperial decree of 1839, the Eastern-Rite Catholic Church was formally suppressed within the Russian Empire, with all Eastern-Rite Catholics to be brought within the Orthodox community. Thus, in the parts of Ukraine that were a part of the Russian Empire, the unity of St. Vladimir's time was, in theory, restored; all Christians following the "law of Rus'" were united in a single Church, that of the Orthodox Church of the Moscow Patriarchate.

The 1905 "Law on Toleration" adopted by Tsar Nicholas II, however, raised the possibility that Ukrainians (or any others, for that matter) who wished to adhere to the 1596 Union might do so. At the same time, fears about losing their national identity led some Greek Catholics in Austrian-ruled Galicia to see separation from Rome and reunification with the Orthodox (the so-called "Russophile movement") as the only option. After World War I, and the Revolution, a further issue arose: in addition to the existence of the Ukrainian Greek Catholic Church, Orthodox disagreed over whether there should be a separate Orthodox Church for Ukraine. Many Orthodox believers wished to remain in union with fellow Orthodox in Russia, enjoying only autonomy; others wanted a completely separate Church--an Autocephalous Church, but, in, creating a separate Church, used methods which effectively separated the Ukrainian Autocephalists from the rest of the Orthodox world. Complicating matters was the existence of the Renovationist movement, which sought to reform and modernize Orthodoxy in both Russia and Ukraine, and which split from both the main pre-Revolutionary-era Church and the Ukrainian Autocephalists.

The victory of Soviet power in much of Ukraine unleashed waves of state-sponsored persecution against all religion, but, in the midst of World War II, the Soviet government came to a precarious *modus vivendi* with the Moscow Patriarchate of the Russian Orthodox Church. When Western Ukraine was united with the rest of Ukraine after World War II, and playing upon any remaining Russophile sentiment, the Soviet government liquidated the Greek-Catholic Church as a corporate entity. Again, in theory, all traditional Christian believers in Ukraine were united into one single Church--the Orthodox Church of the Moscow Patriarchate.

Since 1989, however, what has happened in Ukraine is this: four Churches now claim to be the authentic legacy of the original Church brought to Rus' by Vladimir:

1) The Ukrainian Orthodox Church of the Moscow Patriarchate. It makes its claim to legitimacy-by virtue of the unbroken line of succession from the original metropolitans of Kiev to the metropolitans and patriarchs of Moscow and the 1686 agreement between the Churches of Moscow and Constantinople; this is the only Orthodox Church in Ukraine recognized by all other Orthodox Churches.
2) The Ukrainian Greek-Catholic Church. It makes its claim by virtue of the Union of 1596 between the metropolitan of Kiev and many of the bishops and the see of Rome
3) The Ukrainian Autocephalous Orthodox Church. It believes that, ultimately, the decisions of 1686 were invalid and thus, the faithful of Ukraine had the right, when conditions warranted it, to set up a separate Church. This jurisdiction bases its existence upon the decisions of some of the Orthodox faithful in 1921 to set up a separate Ukrainian Orthodox Church, which

was ultimately liquidated in Ukraine but survived in the diaspora until the fall of Soviet power.
4) The Ukrainian Orthodox Church--Kiev Patriarchate--those bishops and priests of who were connected to the Moscow Patriarchate but now, after independence, believe that an independent Ukraine deserves an independent Church.

Each of the four groups also advances other reasons (based upon size, numbers, transmission of heritage, national "reliability," etc.) for buttressing their claims to be a national church.

The problem for contemporary Ukrainians is this: in the past, whether on the basis of East-Roman (Byzantine) or medieval Latin-Western law, the state would determine which Church was the legitimate one. Thus, Vladimir, Casimir, Sigismund, and Tsar Nicholas I all made a determination as to which Church would legally have the right to exist in Ukraine. The present-day government of Ukraine, however, is expressly forbidden to interfere in such matters. Article 35 of the Constitution of Ukraine, adopted in 1996, is quite clear:

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. The church and religious organizations in Ukraine are separated from the state, and the school — from the church. No religion shall be recognized 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.

The church is separated from the state; the state no longer recognizes any one religion as mandatory or compulsory; citizens are free to organize their own religious communities.

Problems in the Church-State Relationship Arising From Ecclesiastical Disputes

The existence of multiple Churches in Ukraine raises a number of procedural and semantic issues. Which of them is entitled to describe itself as the "Ukrainian Church" or to claim the past heritage? Who has the right to properties, particularly ancient ones, when they might have changed hands a number of times over the centuries? Which group should enjoy the primacy of honor in various societal events (e. g. national holidays, inaugurations, etc.)? Which Church, if any, has the right to speak for Ukrainian civil society in religious and moral issues? Finally, how should the state and media and institutions of public education relate to these four bodies? Moreover, does the state--and civil society--have an interest in advancing, and if necessary, compelling--the union of these four bodies into a single ecclesiastical organization?

It also raises the question: how should other religious groups not affiliated in any fashion to the original Church at Kiev, either because of a particular faith being the national one of a particular minority (Islam vis-a-vis the Crimean Tatars), or by introduction via missionary work into Ukraine, should be evaluated. Can such other groups be described as "Ukrainian" or "traditional," and how should state officials and media workers treat such organizations?

Even a cursory glance by an outsider at the news media of Ukraine, especially as the time grows near for the visit of Pope John Paul II, demonstrates the seriousness of these issues. Who should control the historic church of St. Andrew in Kiev? Who has the right to use St. Sophia, arguably the national cathedral of all Ukraine? Does the government or the president have the right to convoke a council to "unify" the various jurisdictions into a single Church? What right to believers have to dissent from the decisions taken by their leaders?

Because Ukraine has opted for a model of church-state separation, the American experience may prove to contain valuable insights for Ukraine, especially since American newspapers and courts have had to deal with issues similar to those faced by Ukraine--schisms and splits in major churches producing rival bodies advancing claims to property and status. In addition, Ukraine may benefit from examining and emulating compromises reached among competing faith groups to shrines and holy places, such as in Jerusalem or in Ireland.

Media Coverage and Educational Standards: The American Approach

In America, the ***general*** news media (as opposed to the more specialized religious press) tends to cover religious affairs because of their importance to the community and in so doing

tends to accept the claims and counterclaims made by religious organizations at face value. One of the standard texts concerning American standards of journalism notes:

The vital force of spiritual life in a civilized society leaves no question of the newspaper's responsibility to report religious activities and developments. Of course, the newspaper of general circulation should advocate no one religion but be a channel of communication for all religions.[1]

How should religion be covered, however? What happens when there are disputes between faiths and within particular churches? The first obligation of the media outlet is to determine the newsworthiness and relevance to the community of any developments within religious communities:

Sometimes the churches are competitive to the point that publicity given to one may stir up jealousies of the members of others--even of the same denomination. Religion news must therefore be broad enough in denominations, diverse enough in the same denominations, and selective enough in the newsworthiness of materials used that readers will recognize the stories on religious activities as solid news rather than puffy publicity.[2]

Most North American newspapers and media outlets follow a standard convention that it is not the job of the general media to comment editorially upon the dogmas, beliefs, or practices of a particular religious community, and to accord to all faiths a neutrality of coverage. Thus, in guidelines for reporters, one finds the admonition: "sect has a derogatory connotation ... Religion is an all-inclusive word."[3] General codes of ethics in force require reporters and editors to separate their own opinions and beliefs from their news coverage of events and developments, as well as to give to all parties in a dispute the right to have their opinions heard. The 1923 Code of Ethics of the American Society of Newspaper Editors states:

Sound practice makes clear distinction between news reports and expressions of opinion. News reports should be free from opinion or bias of any kind. ... A newspaper should not publish unofficial charges affecting reputation or moral character without opportunity given to the accused to be heard ...[4]

The 1975 revised Code declares:

Every effort must be made to assure that the news content is accurate, free from bias and in content, and that all sides are presented fairly.[5]

The Code of Ethics issued by the Associated Press maintains:

The newspaper should strive for impartial treatment of issues and dispassionate handling of controversial subjects. It should provide a forum for the exchange of comment and criticism.[6]

Journalists are encouraged to "learn the organizational patterns of the churches" that they cover for news stories, and to refrain from using slurs or derogatory comments to describe beliefs, believers, or leaders.[7] Thus, standard American journalistic practice, in covering news stories about controversial religious movements and groups, is to allow the group the right to define itself, by its own standards, but also to acknowledge that the claims made by a particular confession or leader are disputed by others. In other words, media personnel working in the general media (as opposed to the press set up to defend a particular point of view) are encouraged to set aside their own personal beliefs and biases to provide comprehensive coverage.

Within the American press, there is a presumption to accord to a person the title or titles that he or she claims by virtue of leadership in a religious group, even when those titles are disputed by others, although sometimes with the proviso that the person's use of a title is contested. Thus, news reports, for example, of priests or deacons who have split with the Roman Catholic Church will often continue to refer to such persons by their ecclesiastical titles even if Rome no longer recognizes them; however, it is also common to find in news reports indications

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[1] Julian Harriss and Stanley Johnson, *The Complete Reporter*, 2nd edition (New York: Macmillan, 1965), 344.
[2] Ibid, 344-345.
[3] See, for example, *The Art of Editing*, 2nd edition, eds. Floyd K. Baskette and Jack Z. Scissors (New York: Macmillan, 1977), 135. This also notes that the term "church" should be applied only to Christian bodies. Ibid, 135.
[4] Cited in Philip Meyer, *Ethical Journalism* (New York: Longman, 1987), 248.
[5] Ibid, 249.
[6] Ibid, 250.
[7] Harriss/Johnson, 345, 67.

that these titles are unrecognized. In some cases, however, to avoid confusion, news accounts or official documents will dispense with all titles, not as a sign of disrespect, but to avoid confusion.[1]

Overall, the development of something in Ukraine akin to *The Associated Press Stylebook and Libel Manual*, which contains these types of guidelines, can help to staunch the use of the general, mainstream press for measures which divide the citizenry and inflame intercommunal and intrachurch quarrels. Another step might be the creation of something along the lines of the "Religious News Service" based out of Washington, DC; this is a press service "providing news and information on all faiths and religious movements to the nation's leading newspapers, news magazines, broadcast organizations and religious publications. RNS' first priority is to provide intelligent, objective coverage of all religions-- Judaism, Christianity, Islam, Asian religions and private spirituality. RNS also provides commentary from a diverse array of all points of the political and theological spectrum."[2] RNS thus provides two critical services; it enables religious groups to provide information about themselves, their beliefs, their history, and their interests, and it assists the secular, mainstream media to provide a balanced and fair portrait of religion.

The same sets of principles are also applied in American public schools. In 1995 the Department of Education promulgated a set of guidelines (*Religious Expression in Public Schools*).

Two of the relevant guidelines are reproduced here in their entirety:

Official neutrality regarding religious activity: Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the establishment clause from soliciting or encouraging religious activity, and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content, and from soliciting or encouraging antireligious activity.

Teaching about religion: Public schools may not provide religious instruction, but they may teach about religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature, and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.[3]

These federal guidelines drew a great deal from a document issued in April 1995, "Religion in the Public Schools: A Joint Statement of Current Law," which was endorsed by a broad coalition of religious and philosophical organizations.[4] Such guidelines also attempt to find a balance between the religious convictions of individuals and the right and obligation of the state to ensure standards in education. Some of these recommendations include:

Schools enjoy substantial discretion to excuse individual students from lessons which are objectionable to that student or to his or her parent on the basis of religion. Schools can exercise that authority in ways which would defuse many conflicts over curriculum content. If it is proved that particular lessons substantially burden a student's free exercise of religion and if the school cannot prove a compelling interest in requiring attendance the school would be legally required to excuse the student.

Schools may teach civic virtues, including honesty, good citizenship, sportsmanship, courage, respect for the rights and freedoms of others, respect for persons and their property, civility, the dual virtues of moral conviction and tolerance and hard work. ... The mere fact that most, if not all, religions also teach these values does not make it unlawful to teach them.

Religious messages on T-shirts and the like may not be singled out for suppression. Students may wear religious attire, such as yarmulkes and head scarves, and they may not be forced to wear gym clothes that they regard, on religious grounds, as immodest.

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[1] See, for example, the first footnote in the case, METROPOLITAN PHILIP, as Primate, etc., et al.v. BASIL STEIGER et al. (H019638 (Santa Cruz County Super. Ct. No. 133849)), heard by the Court of Appeal of the Sixth Appellate District of the State of California (8 August 2000), discussing the use of last names without titles in hearing a case arising of out a church schism.

[2] Taken from the official website of RNS, at http://www.religionnews.com/about.html.

[3] The guidelines are available from the Department of Education at http://www.ed.gov/Speeches/08-1995/religion.html.

[4] A copy of this statement is available at http://humanist.net/documents/religion-schools.html.

Schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by outsiders on premises during the school day.[1]

Given that the Ukrainian Constitution calls for the separation of the public school from the church, the American experience in trying to reconcile the secular nature of public education with the overt religiosity of the population may prove to be quite helpful in drafting and formulating policies. In particular, the American version of the "release-time" program may prove useful in reconciling the desire of the state to maintain a neutral, secular public school system with the wishes of parents to have their children instructed in catechism or other religious subjects.

In terms both of education and media coverage, people must not associate neutrality with acceptance. That is to say, reporting about what a group says or believes does not constitute endorsement of said message.

American Legal Precedents and Ukrainian Conditions--The Role of Journalists and Scholars

One of the areas in which both schools and the media might be able to advance the cause of religious freedom and mutual toleration in Ukraine is to examine the American legacy and to determine to what extent such precedents might be of use in helping Ukraine to forge solutions. The remainder of this paper is devoted to examining ways in which both American and other Western experiences might be of assistance in helping Ukrainian civil society and the Ukrainian government cope with issues of concern.

In 1876, the Ohio Supreme Court ruled:

It [the constitution] gives the state no power to declare which religion or religious sect is better or best ... This makes the state impartial and neutral between every creed, faith, and sect existing among the people for the time being.[2]

This should be the initial attitude of the state, the media, and the school in approaching religious matters.

In the eyes of the state, a religious community is a voluntary society, and as such those who freely join it also consent to be bound by the rules, regulations, and traditions of that group.[3] American jurisprudence maintains that it is not the job of secular authority or of the civil court to determine whether persons or groups are schismatics or heretics or to solve questions of an essentially religious or ecclesiastical nature. The landmark Watson v. Jones decision of the U. S. Supreme Court (1871) declared:

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.[4]

The government has no authority to establish, create, or regulate ecclesiastical bodies, even those which originate outside its sovereign jurisdiction. In 1952, the Supreme Court struck down an ordinance of New York state which sought to transfer control over Russian Orthodox

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[1] Ibid.
[2] HUMPHREYS v. LITTLE SISTERS OF THE POOR (1876)
[3] WATSON v. JONES, 80 U.S. 679 (1871).
[4] Ibid.

parishes in that state from a body loyal to the Patriarchate in Moscow to the North American Metropolia of the Russian Orthodox Church, which had separated from its Mother Church:

The Court found:

Article 5-C was added to the Religious Corporations Law of New York in 1945 and provided both for the incorporation and administration of Russian Orthodox churches. Clarifying amendments were added in 1948. The purpose of the article was to bring all the New York churches, formerly subject to the administrative jurisdiction of the Most Sacred Governing Synod in Moscow or the Patriarch of Moscow, into an administratively autonomous metropolitan district. That district was North American in area, created pursuant to resolutions adopted at a sobor held at Detroit in 1924. 2 This declared autonomy was made effective by a further legislative requirement that all the churches formerly administratively subject to the Moscow synod and patriarchate should for the future be governed by the ecclesiastical body and hierarchy of the American metropolitan district. ...

But an enactment by a legislature cannot validate action which the Constitution prohibits, and we think that the statute here in question passes the constitutional limits. We conclude that Article 5-C undertook by its terms to transfer the control of the New York churches of the Russian Orthodox religion from the central governing hierarchy of the Russian Orthodox Church, the Patriarch of Moscow and the Holy Synod, to the governing authorities of the Russian Church in America, a church organization limited to the diocese of North America and the Aleutian Islands. This transfer takes place by virtue of the statute. Such a law violates the Fourteenth Amendment. It prohibits in this country the free exercise of religion. Legislation that regulates church administration, the operation of the churches, the appointment of clergy, by requiring conformity to church statutes "adopted at a general convention (sobor) held in the City of New York on or about or between October fifth to eighth, nineteen hundred thirty-seven, and any amendments thereto," note 3, supra, prohibits the free exercise of religion.[1]

American jurisprudence also recognizes the decisions taken by religious bodies with regard to internal matters are not subject to review by the courts, unless there is proper cause:

In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil associations.[2]

Nor does the state have the power to analyze the rules and regulations adopted by a religious body and to decide whether they are reasonable or should be upheld. In a 1976 case, the Supreme Court ruled:

We have concluded that whether or not there is room for "marginal civil court review" under the narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes, 7 no "arbitrariness" exception - in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations - is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them.[3]

What happens, however, when a group splits up, or there is dissension, and thus conflicting claims to property or other items? The Watson precedent of the Court sets forth:

In such cases where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such

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[1] KEDROFF v. ST. NICHOLAS CATHEDRAL, 344 U.S. 94 (1952).
[2] GONZALEZ v. ROMAN CATHOLIC ARCHBISHOP OF MANILA, 280 U.S. 1 (1929).
[3] SERBIAN ORTHODOX DIOCESE v. MILIVOJEVICH, 426 U.S. 696 (1976)

cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property.[1]

The Supreme Court further clarified these principles in a 1970 decision involving two sets of property disputes between rival churches in Virginia and Maryland. In a concurring opinion, Justices Brennan, Douglas, and Marshall stated:

Thus the States may adopt the approach of Watson v. Jones, 13 Wall. 679 (1872), and enforce the property decisions made within a church of congregational polity "by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government," and within a church of hierarchical polity by the highest authority that has ruled on the dispute at issue, unless "express terms" in the "instrument by which the property is held" condition the property's use or control in a specified manner. ...

"[N]eutral principles of law, developed for use in all property disputes," provide another means for resolving litigation over religious property. Under the "formal title" doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws. Again, however, general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues.

A third possible approach is the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine. Such statutes must be carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies.[2]

1. A summary of the above cases produces the following conclusions:
2. The state is forbidden to interfere in the internal affairs of churches and religious bodies;
3. The state has no competency or jurisdiction to assess schism or heresy within a religious body;
4. The state has no authority to review the decisions taken by church bodies or ecclesiastical boards with regard to internal discipline or procedure
5. In the event of disputes over property or other matters which involve the civil courts, the courts must rely upon the documents of incorporation and other documents which spell out the relationships within the religious organization. In the United States, for example, local Roman Catholic congregations register their properties in the name of the local bishop and diocese. Thus, if a congregation chooses to leave the Roman Catholic Church, the property remains under the control of the Catholic diocese, even if a majority of the parishioners desire to separate. Many Protestant churches in the United States are congregational, that is, the deeds to the property as well as control over the hiring of church staff are vested in the hands of the congregation and not a central church administration. Because the Orthodox Church is a conciliar church, and given the numerous splits that have occurred in Orthodox jurisdictions in the United States, there have been a number of disputes as groups have sought to leave a particular diocese and join another Orthodox group.[3]. Generally, court rulings have been as follows:
   a) if the church recognized the authority of the bishop explicitly in its statutes and defined itself as a congregation belonging to a particular diocese, the courts have held that if the parish, even a majority, wish to leave, they may not take the church property with them. This also applies even if there are no written documents but there is a consistent pattern of a particular parish accepting the authority of the hierarch;
   b) if the church was incorporated as a congregational entity, even if the bishop had spiritual jurisdiction, if a majority of the parish leaves his jurisdiction, they may take the property
   c) if the church is a private corporation or held in trust by a particular family, they are free to carry their property with them. In a number of cases, Orthodox monasteries in the United States have moved from jurisdiction to jurisdiction because they have either

[1] WATSON v. JONES, 80 U.S. 679 (1871).

[2] MD. & VA. CHURCHES v. SHARPSBURG CH., 396 U.S. 367 (1970).

[3] In fact, there is current litigation in the United States regarding the status of Ukrainian Orthodox parishes. See http://www.brama.com/news/press/990628souoc.html for one perspective on the issues surrounding the suits involving Holy Ascension Ukrainian Orthodox Church in Clifton, NJ.

been registered as stand-alone corporations or because the title and deed to property has been vested in an individual rather than in the name of the church

Are American Solutions Relevant to Ukraine?

Arguably the most pressing church-state issue facing Ukraine today is the settlement of the myriad of property disputes arising out of the collapse of Soviet power and the revival of ecclesiastical alternatives to the Moscow Patriarchate for believers in Ukraine.

In dealing with the status of parish communities in Ukraine that were in existence prior to 1991, an American court would most likely take into account the relevant provisions of the 1929 Soviet legislation dealing with the legal, corporate status of religious congregations, as modified by the amendments
of 1975. Under Soviet law, each local congregation was registered by a group of individual citizens, the so-called "twenties." Article 5, as amended in 1975, decrees that "In order to register a religious society its founders, consisting of at least twenty persons, address a petition to the executive committee of the district or city soviet." It was the congregation which under Soviet law assumed all responsibilities for the upkeep and maintenance of the religious congregation. Article 27 is quite clear: "Houses of prayer and religious belongings are transferred to the believers comprising a religious society." In the eyes of the law, the priest and bishop, as well as centralized structures such as the diocese, had no tangible legal authority over the parish, only a spiritual tie. Article 20 notes that "Religious centers, spiritual administrations and other religious organizations elected at such congresses and conferences have administrative jurisdiction only over the religious activities of religious associations."[1] It is likely, therefore, that even though the Orthodox and Catholic Churches are in fact hierarchically organized, that American judicial precedents would support the right of every parish existing in Ukraine and legally registered prior to 1991 to decide, without reference to any higher authority, what jurisdiction to join. If a majority of a congregation thus voted to leave a particular Church and affiliate to another, American precedents would most likely support that decision, unless, as the Gonzalez case notes, there was something fraudulent in the process by which the decision was made.

Soviet law also makes reference to the fact that in some cases, a religious society might have use of a particular piece of property, but that title was vested in the hands of the local administration. In that case, the local administration would be free to decide the fate of the building.[2]

Essentially, American precedents would, for the most part, ratify the *status quo* that has emerged in Ukraine, although, in those cases where force or fraud were used to transfer the property of a community from one jurisdiction to another, American courts might order that decision suspended for review, and perhaps mandate that a new parish meeting be held under controlled conditions. Because secular courts are not empowered to adjudicate spiritual claims, the arguments put forth by the various jurisdictions in Ukraine as to who constitutes "the true Church" would not be admissible.

American precedents would not allow the state to officially recognize a Church and in so doing compel that other groups surrender their properties to this officially recognized body. In essence, American courts would insist upon the *status quo ad presentem*: that each jurisdiction has a right to exist and function and that only by the voluntary decisions made by the members of each jurisdiction to unite can be accepted as legally binding.

To avoid future issues over church properties in Ukraine, it would be advisable for religious groups to:

1) Re-register and spell out clearly whether the religious community is congregational (that is, the final authority over the religious community is the local congregation which defines its own rules of membership and sets down the procedure for governing itself) or hierarchical (part of a larger entity, accepting central control and leadership).
2) To avoid the problem of congregations changing jurisdictions, a community could, in its re-registration, mandate that it is defined as a parish of a particular jurisdiction, and that in the event that the parish corporation is dissolved or chooses to leave that jurisdiction, the property reverts to the central church authority

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[1] See Appendix Six of Dimitry Pospielovsky, *The Russian Church Under the Soviet Regime, 1917-1982*, Volume II (Crestwood, NY: St. Vladimir's Seminary Press, 1984), 493-500.

[2] Cf. Article 10, Ibid, 495.

What about the participation of clergymen of various jurisdictions and faith communities in official ceremonies? Given the acrimony that can exist between competing faiths, does, for example, the invitation to hierarchs of all of the different Orthodox Churches in Ukraine by state officials to attend official functions, constitute recognition of their claims?

The precedent set down by the United States Supreme Court in the case, Marsh v. Chambers (1983), which dealt with the question of having a paid chaplain open the sessions of the legislature of the state of Nebraska, may prove useful for Ukraine. It said that having a member of the clergy open the session (or preside at other state events) could not be viewed as " as a proselytizing activity or as symbolically placing the government's "official seal of approval on one religious view," especially if "there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief."[1] Thus, the court ruled, the attitude of lawmakers and policy officials should be, not to determine whether they personally agree with the theology or position of the person offering the prayer, for the purpose of having religious figures is not to cause people "so divided in religious sentiments ... [to] join in the same act of worship," but whether, quoting the words of the American statesman Samuel Adams, they "could hear a prayer from a gentleman of piety and virtue, who was at the same time a friend to his country."[2]

In terms of confiscated -property, the general operative rule is that the property should be returned to the last legal owner, if the confiscation itself was judged to be illegal. An alternative is for the state of Ukraine to take over key historical sites under the doctrine of eminent domain, "the right of the government to take property from a private owner for public use by virtue of the superior dominion of its sovereignty over all lands within its jurisdiction."

However, American precedents are not of much assistance in other instances, for example, when dealing with the return of confiscated church properties when there has been historical events in which properties have been held by different jurisdictions at different times. St. Sophia Cathedral in Kiev, the metropolitan see of Rus', was originally the mother church from which the modern Moscow Patriarchate originated, following the transfer of the see of Kiev to Moscow in 1325. St. Sophia was the cathedral of the metropolitans of Kiev who remained under Constantinople following the division of the Church in Rus' in 1458. The Moscow Patriarchate maintains that this see was united to Moscow in1686; the partisans of the Ukrainian Autocephalous Church and the Ukrainian Orthodox Church-Kiev Patriarchate maintain that that transfer was invalid. As a result of the Union of Brest in 1596 and the acceptance by Metropolitan Mikhail Ragoza of Kiev of that Union, St. Sophia would have been a Greek Catholic cathedral, until Polish authority in Kiev was thrown off and the church reverted to the Orthodox. From 1686 until 1921, St. Sophia was under the control of the Moscow Patriarchate. In 1921, it was handed over to the Ukrainian Autocephalous Orthodox Church, which held the cathedral until the UAOC was destroyed in 1930. Since that time, St. Sophia has been a state museum and monument.

The Irish solution, at the time of independence in 1922, was to leave all church properties frozen in the control of the church who had possession, regardless of any other factor. By legislation, the state was
forbidden to enact any statute that would either deprive or endow any church of its existing property, even if other groups might have prior claims. Thus, most of the historic churches in Ireland, which were once Roman Catholic, and after 1536 passed into the control of the Protestant Church of Ireland, remain in the hands of the Church of Ireland, even though it, by membership, comprises less than ten percent of the population. The Irish rejected a redistribution of church properties either based on prior claims (e. g. whichever church originally built the premises was entitled to its return) or on concepts of majoritarianism (that is, the largest church group should control the key properties).[3]

The government in Ukraine is well aware of the difficulties in mediating between competing religious groups for control of historic places of worship, as its handling of the status of the Uspenskii Sobor on the grounds of the Lavra makes clear. The designation of key

[1] MARSH v. CHAMBERS, 463 U.S. 783 (1983)

[2] Ibid.

[3] Based in part on e-mail conversations with the Rt. Rev. John Patterson, Dean of Christ Church Cathedral, Dublin, Ireland.

historical sites as the property of the state is a viable, although short-term, solution to such disputes. One of the constructive roles that the media can play is in suggesting workable, long-term solutions.

The United States does not have any state-owned religious buildings, but the "National Cathedral" in Washington, D. C., serves unofficially as the spiritual center of the nation's capital. It is therefore simultaneously a parish affiliated with the Protestant Episcopal Church and an interfaith center of worship for all Americans.

Gregory Rixon, director of Public Affairs for the Cathedral, points out:

We are the "Chief Mission Church of the Diocese of Washington." That is very straightforward. We are also "A Great Church for National Purposes," and although we are not funded or supported by the government in any way, we are seen by many as the church our national leaders will "use" when it is appropriate for our nation to celebrate an event such as the return of hostages or the inauguration of a president, or mourn the deaths of our countrymen such as in the bombings of our embassies in Africa or the death of Secretary of Commerce, Ron Brown. When any of our Presidents (either serving or former) dies, it is likely funeral services will be held here.

The role or mission that is proving to be our most intriguing is our newly defined one as a "National House of Prayer For All People." We have long used the quote from Isaiah as a statement of our mission, but only recently did we add the "National" to the motto. Our Dean, Nathan D. Baxter, chose to do this to underscore his belief that we, as an institution, should be more than a big or important Church, but should be the institution that is positioned as "top of mind" when people consider what represents the spirit of shalom, or spiritual hospitality, for our nation. To do this, we will maintain our integrity as a Christian institution, but at the same time, to use the Dean's image, "open our spiritual arms widely in a Christlike gesture to embrace all persons."

Our guidelines for ecumenical or interfaith events or services are not rigid, nor are they bureaucratic lists of dos and don'ts. Basically we ask ourselves whether or not an event or service will further our goal to be positioned as an institution that is central to the nation's thinking on a number of important issues -- social, cultural and spiritual. For example, our prayer service to celebrate the new millennium was widely interfaith in nature and attracted the attention of news media and others around the world. We have hosted many events in partnership with important national interfaith institutions that capitalize on the importance of the Cathedral as a national institution. (E-mail communication with the author)

Given the number of historic buildings and sites in Ukraine which are currently in dispute, one potential solution, following the Washington Cathedral model, would be to create a public trust which would be vested with the title to specific shrines and holy places, on the grounds that such places are the patrimony of the people of Ukraine, and draw up guidelines for the use and operations of such facilities by all interested religious groups. This would also alleviate tensions in trying to designate a particular group or jurisdiction as "national" and thus entitled to historic properties.

In the Holy Land, there are models of agreements between various Churches (for example, the "Status Quo" which governs the Church of the Holy Sepulchre in Jerusalem or the Church of the Nativity in Bethlehem) by which different religious groups can share the same site. Such agreements spell out the conditions for using the shrine, the rights enjoyed by each community, and the compromises that facilitate the ability of each group to use the property for religious services. Such agreements have allowed a certain degree of tranquility and stability to characterize intercommunal relations in areas where tensions and rivalries could easily spill over into conflict. More importantly, such agreements allow pilgrims and worshippers of all faiths access to the sacred sites.

United Nations General Assembly Resolution 181 (adopted November 29, 1947), lays out a number of the principles by which sites in the Holy Land should be governed. Given that a number of key shrines in Ukraine are claimed by a number of domestic religious groups, but also have international significance, especially in regard to Russia, an examination of this resolution might help Ukraine in formulating policy.

Part I, Chapter I deals with the shrines:

1.Existing rights in respect of Holy Places and religious buildings or sites shall not be denied or impaired.

2.In so far as Holy Places are concerned, the liberty of access, visit and transit shall be guaranteed, in conformity with existing rights, to all residents and citizens of the other State and of the City..., as well as to aliens, without distinction as to nationality, subject to requirements of national security, public order and decorum. Similarly, freedom of worship shall be guaranteed in conformity with existing rights, subject to the maintenance of-public order and decorum.

3.Holy Places and religious buildings or sites shall be preserved. No act shall be permitted which may in any way impair their sacred character. If at any time it appears to the Government that any particular Holy Place, religious building or site is in need of urgent repair, the Government may call upon the community or communities concerned to carry out such repair. The Government may carry it out itself at the expense of the community or communities concerned if no action is taken within a reasonable time. ...

5.The Governor ... shall have the right to determine whether the provisions of the Constitution of the State in relation to Holy Places, religious buildings and sites within the borders of the State and the religious rights appertaining thereto, are being properly applied and respected, and to make decisions on the basis of existing rights in cases of disputes which may arise between the different religious communities or the rites of a religious community with respect to such places, buildings and sites. He shall receive full co-operation and such privileges and immunities as are necessary for the exercise of his functions in the State.

It is clear that further study would be needed, both by Ukrainian and non-Ukrainian specialists, to determine which precedents might be further shaped and developed to fit Ukrainian conditions. Nevertheless, Ukraine's religious problems are neither intractable nor insolvable, and Ukraine's media outlets and educational centers can both play a major role in helping to raise awareness of such solutions before civil society and the state.

Б.Шанда (Balázs Schanda) (Будапешт, Угорщина)

RELIGIOUS FREEDOM IN HUNGARY WITH SPECIAL REGARD TO EDUCATION AND MASS MEDIA

1. Constitutional Regulations on Religious Freedom

According to Section 60 of the Constitution of the Republic of Hungary

“(1) *In the Republic of Hungary everyone has the right to the freedom of thought, conscience and religion.*

(2) *This right includes free choice or acceptance of religion or other conviction and the liberty to publicly or privately express or decline to express, exercise and teach such religions and convictions by the way of religious actions, rites or in any other way, either individually or in a group.*

(3) *In the Republic of Hungary the Church functions in separation from the State.*

(4) *The ratification of the law on the freedom of conscience and of religion requires the votes of two thirds of the MPs present.*”

Hungary has joined the major human rights conventions both under the auspices of the UN as well as those under the auspices of the Council of Europe. Hungary signed and ratified the International Covenant on Civil and Political Rights[1], the Convention of the Rights of the Child[2] as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms[3] with its additional protocols.

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[1] Ratified by the lawdecree 8/1976.

[2] Ratified by Act LXIV/1991.

[3] Ratified by Act XXXI/1993.