

Note

Orthodox Christianity and the Russo-Ukrainian War

Andrew P. Follett†

In the Russo-Ukrainian war, Orthodox Christianity and the battle for ecclesiastical jurisdiction mirror both international and domestic politics. This Note argues that the creation and recognition of the independent Orthodox Church of Ukraine in 2018–2019 should be understood as a phenomenon of international law. It outlines the history of the Russo-Ukrainian Orthodox schism, contextualizes it in the broader landscape of international political developments, and explores how religious conflict in Ukraine reveals the potential significance of transnational religious institutions in influencing international norms, developments, and law.

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INTRODUCTION

In the Russo-Ukrainian war, Orthodox Christianity mirrors both domestic and international politics.¹ Beyond the baseless claims of “denazification,”² Russian leaders believe the invasion of Ukraine to be justified by a “spiritual” dimension.³ Because a plurality of the Russian population belongs to the Russian Orthodox Church (ROC),⁴ Orthodox Christianity is “on the front lines of social and political life.”⁵ Religion has been abused as a rhetorical vehicle to drum up support for the subjugation of Ukraine under the “mother church”⁶ and thereby protect Ukrainians from the purportedly sinful forces of a godless West.⁷ It is no mistake that Russian President Vladimir Putin has employed fundamentally religious rhetoric while dissension by religious leaders has been met with state violence.⁸

1. See generally Stefan Dudra, *Autocephalization of the Church in Ukraine as an Element of Competition Between the Patriarchates of Constantinople and Moscow for the Leadership in the Orthodox World*, 63 *ATHENAEUM: POLISH POL. SCI. STUD.* 137, 137-55 (2019) (discussing the rivalrous nature of competing Orthodox institutions in the context of tensions between Russia and Western Europe).

2. Rachel Treisman, *Putin's Claim of Fighting Against Ukraine 'Neo-Nazis' Distorts History, Scholars Say*, NPR (Mar. 1, 2022), <https://www.npr.org/2022/03/01/1083677765/putin-denazify-ukraine-russia-history>. In fact, President Putin's security council more recently shifted towards the more on-the-nose rhetoric of “desatanization,” with President Putin being given the mantle of Ukraine's “chief exorcist.” Isabel Van Brugen, *Putin Appointed 'Chief Exorcist' as Kremlin Whips up Satanic Panic*, *NEWSWEEK* (Oct. 26, 2022), <https://www.newsweek.com/putin-chief-exorcist-kremlin-desatanization-ukraine-security-council-1754912>.

3. Edward Pentin, *Widespread Orthodox Church Backlash Unleashed Against Russia's Aggression in Ukraine*, *NAT'L CATH. REG.* (Mar. 11, 2022), <https://www.ncregister.com/news/widespread-orthodox-church-backlash-unleashed-against-russia-s-aggression-in-ukraine>.

4. АТЛАС РЕЛИГИЙ И НАЦИОНАЛЬНОСТЕЙ РОССИЙСКАЯ ФЕДЕРАЦИЯ 18 (2012); *Великий пост — 2022*, ВЦИОМ (2022), <https://wciom.ru/analytical-reviews/analiticheskii-obzor/velikii-post-2022> (68% of Russians self-identify as Russian Orthodox); *Об оскорблении религиозных чувств*, ФОМ (Apr. 21, 2020), <https://fom.ru/TSennosti/14494> (60% of Russians are Russian Orthodox); *Religious Belief and National Belonging in Central and Eastern Europe*, PEW RSCH. CTR. (May 10, 2017), <https://www.pewresearch.org/religion/2017/05/10/religious-belief-and-national-belonging-in-central-and-eastern-europe/> (78% of Ukrainians and 71% of Russians identify as Orthodox Christian).

5. Tornike Metreveli, *ORTHODOX CHRISTIANITY AND THE POLITICS OF TRANSITION 1* (2021).

6. Lukasz Fajfer & Sebastian Rimestad, *The Patriarchates of Constantinople and Moscow in a Global Age: A Comparison*, 10 *INT'L J. FOR THE STUDY OF THE CHRISTIAN CHURCH* 211, 224-25 (2010) (“Moscow has also used its connections with the Kremlin and the Russian Presidents Putin and Medvedev to put pressure on the Russian Orthodox Church outside Russia to unite with the ‘mother church.’”).

7. *Russia Says US Behind Ukraine's Pressure on Moscow-Linked Orthodox Church*, *REUTERS* (Apr. 2, 2023), <https://www.reuters.com/world/europe/russia-says-us-behind-ukraines-pressure-moscow-linked-orthodox-church-2023-04-02>; Katherine Kelaidis, *The Russian Patriarch Just Gave His Most Dangerous Speech Yet — and Almost No One in the World Noticed*, *RELIGION DISPATCHES* (Apr. 4, 2022), <https://religiondispatches.org/the-russian-patriarch-just-gave-his-most-dangerous-speech-yet-and-almost-no-one-in-the-west-has-noticed>; Pentin, *supra* note 3 (“At the same time, he also made clear that he saw Ukraine as Russian territory: ‘May the Lord preserve the Russian land, [a] land which now includes Russia and Ukraine and Belarus and other tribes and peoples.’”). Patriarch Kirill messaged to the Ukrainians about the need for the Holy Russians’ need to stay united shortly after his installation as Patriarchate as well. Fajfer & Rimestad, *supra* note 6, at 223; *Patriarchal Sermon on Cheese Week after the Liturgy at the Cathedral of Christ the Savior*, *PATRIARCHA.RU* (Mar. 6, 2022), <http://www.patriarchia.ru/db/text/5906442.html> (Russian Orthodox Church official site; translated from Russian); Pentin, *supra* note 3.

8. See, e.g., *Russia: Two Priests on Trial for Opposing Russia's War in Ukraine*, *FORUM18* (Oct. 11, 2022), https://www.forum18.org/archive.php?article_id=2780; *Russia: Government Pressure on Religious Leaders to Support Ukraine War*, *FORUM18* (Aug. 2, 2022), https://www.forum18.org/archive.php?article_id=2763; *Russia: Opposition to War in Ukraine — Official*

Orthodox Christianity, however, serves a much more complex role in the conflict than mere pretext for Russian aggression. To Ukrainians, Orthodox Christianity and aspirations of a Ukrainian church independent of Russian influence have served as crucial fronts for resisting Russian imperialism and strengthening an independent national political identity. Indeed, the Ukrainian government itself has declared as much: in 2018, the Chairman of the Ukrainian Verkhovna Rada, the unicameral parliament of Ukraine, even went so far as to declare the issue of Ukrainian Orthodox ecclesiastical independence “one of the key issues of the existence of the Ukrainian State itself.”⁹

Just as Russia has exploited religious identity in its attempt to justify atrocities, Ukrainians leverage the Orthodox identity as a powerful tool in their quest to maintain cultural and political freedom from Russian interference. In line with former Ukrainian President Petro Poroshenko, who stated that “the Kremlin regards the Russian [Orthodox] Church as one of the key tools of influence over Ukraine,” religious independence from Moscow is comparable to the political independence signified by membership in the European Union (EU) or the North Atlantic Treaty Organization (NATO).¹⁰

The language of the Christian East may seem abstract, arcane, or foreign to Western observers and legal scholars. Especially in the midst of increasing religious disaffiliation in the West,¹¹ it might be difficult to imagine the significance of religion and religious institutions at this scale. Yet to ignore delineations of canonical territory or the realities of Eastern Orthodoxy in Ukraine risks obfuscating the nature and stakes of the cultural realities undergirding the war.

This Note considers the 2018–2019 creation and recognition of an independent Orthodox Church of Ukraine (OCU) as an exercise in international law—the culmination of centuries of conflict over religious jurisdiction and a proxy for political control in Ukraine. It also outlines the historical context and process leading to transnational Orthodox institutions’ recognition of Ukrainian church autocephaly.¹²

In a conflict where national Orthodox churches often act as proxies for their

Pressure and Censorship, FORUM18 (May 13, 2022), https://www.forum18.org/archive.php?article_id=2741; *Russia: Religious Opposition to War in Ukraine — Prosecutions and Detentions*, FORUM18 (May 6, 2022), https://www.forum18.org/archive.php?article_id=2738.

9. *United States to Support Ukraine’s Tomos of Autocephaly Once Granted*, VERKHOVNA RADA OF UKR. (Sept. 12, 2018), https://www.rada.gov.ua/en/news/top_news/161971.html.

10. *Ukrainian Lawmakers Back President’s Move To Obtain Autocephalous Status For Orthodox Church*, RADIOFREE EUR. RADIOLIBERTY (Apr. 19, 2018), <https://www.rferl.org/a/ukraine-lawmakers-back-president-move-to-obtain-autocephalous-status-for-orthodox-church/29176970.html>.

11. See, e.g., Yves Lambert, *Trends in Religious Feeling in Europe and Russia*, 47 *DANS REVUE FRANÇAISE DE SOCIOLOGIE* 99 (2006); *Modeling the Future of Religion in America*, PEW RSCH. CTR. (Sept. 13, 2022), <https://www.pewresearch.org/religion/2022/09/13/modeling-the-future-of-religion-in-america/>; Isabella Kasselstrand, *Secularization or Alternative Faith: Trends and Conceptions of Spirituality in Northern Europe*, 15 *J. RELIGION EUR.* 27 (2022).

12. This refers to the kind of quasi-sovereignty granted to an Orthodox church that conveys a right to govern itself and determine its own leadership. Metreveli, *supra* note 5, at 7; Dudra, *supra* note 1, at 140 (“The very concept of autocephaly is defined as the independence of the national (local) church and independence from the superior spiritual authorities abroad, while maintaining the unity of faith (religion, confession), sacraments and canonical principles.”).

respective governments¹³ and political interests,¹⁴ Russian Orthodox claims to canonical territory are tantamount to claims of political jurisdiction.¹⁵ Russians rightly see the westward re-orientation of the Orthodoxy in Ukraine as a sort of microcosm for larger trends in Ukraine's cultural or institutional-political realignment towards the West and its centers of power (e.g., the EU and NATO). This is because Orthodox identity and jurisdiction define the boundaries of national identity.¹⁶ In the Russo-Ukrainian war, Orthodox churches are not only "important transnational actor[s],"¹⁷ but are themselves *loci* of transnational norm-making and lawmaking—as legitimate and authoritative as any other international adjudicatory body or actor.¹⁸

The Russo-Ukrainian war, then, needs to be understood as a "hybrid war" with many components. Military action is one, of course, but informational and cultural dimensions are also of crucial importance.¹⁹ The common (if sometimes implicit) disregard for religious institutions in defining international norms, determining rules for the operation of transnational bodies, and providing fora for dispute resolution may be partially attributed to assumptions that, in the modern age, religion would "disappear" and be replaced by more "modern" and secularized centers of power.²⁰

Relatedly, the disregard for religious institutions might stem from the view that religion is normatively suspect or that "when religion is brought into domestic or international public life . . . it inherently causes war, intolerance, devastation, political upheaval, and maybe even the collapse of the international order."²¹ But this viewpoint, and the related expectation that the secular and

13. Ash Bilge, *Moscow and Greek Orthodox Patriarchates: Two Actors for the Leadership of World Orthodoxy in the Post Cold War Era*, 7 TURKISH POL'Y Q. 97, 104 (2008) ("The Kremlin supports the Russian Orthodox Church's international activities and its claim for the leadership of the Orthodox world. In the same manner[,] the Patriarch in Istanbul has found powerful allies such as the [United States] and the EU for its claim of the leadership to encounter Russian influence over Orthodox nations.").

14. Dudra, *supra* note 1, at 145.

15. Sebastian Rimestad, *International Law and the Transnational Dimension of the Russian Orthodox Church*, in RUSSIAN DISCOURSES ON INTERNATIONAL LAW: SOCIOLOGICAL AND PHILOSOPHICAL PHENOMENON 171 (P. Sean Morris ed., 2019) (discussing how MP politics have played out in other post-Soviet nations); *United States to Support Ukraine's Tomos of Autocephaly Once Granted*, *supra* note 9 (statement by 2018 Chairman of the Verkhovna Rada that "[t]he mere idea of the 'Russian world,' with which Putin justifies his expansion, began to infiltrate through the Moscow Patriarchate's shrines").

16. *Religious Belief and National Belonging in Central and Eastern*, *supra* note 4; see also Metreveli, *supra* note 5, at 8 ("Religion and nationalism do not merely coexist, they flourish as parallel institutional structures within (and possibly beyond) the state.").

17. Rimestad, *supra* note 15, at 173.

18. See Ingo Venzke, *Between Power and Persuasion: On International Institutions' Authority in Making Law*, 4 TRANSNAT'L LEGAL THEORY 354 (2013).

19. See *id.*; Christine Lehn, *Ukraine War: The Role of the Orthodox Churches*, DEUTSCHE WELLE (Mar. 9, 2022), <https://www.dw.com/en/ukraine-war-the-role-of-the-orthodox-churches/a-61063614> ("Professing to being part of the Orthodox Church in Russia can be both a religious as well as cultural affiliation. 'There are people in Russia who call themselves Orthodox, but at the same time say they don't believe in God,' Bremer explains. 'This is also a matter of identity.'").

20. See Mashood A. Baderin, *Religion and International Law: Friends or Foes?*, 5 EUR. HUM. RTS. L. 637, 637-38 (2009); see also W. Michael Reisman, *Eritrea-Yemen Arbitration (Award, Phase II: Maritime Delimitation)*, 94 AM. J. INT'L L. 721, 729 (2000).

21. Baderin, *supra* note 20, at 646; see also SCOTT M. THOMAS, *THE GLOBAL RESURGENCE OF RELIGION* 22 (2005).

religious occupy different spheres, with the latter occupying a subordinate position,²² is challenged by examining the case of Orthodoxy and its role in the Russo-Ukrainian war. Rather than asking “whether religion and international law are friends or foes,”²³ this Note seeks to consider the ways that Orthodox religious adjudicatory organs are *themselves* venues for transnational law and norm-creation.

This Note proceeds, in Part I, by briefly outlining the history of Ukraine’s jurisdictional dispute in Eastern Orthodoxy. While it is impossible to do justice to a millennium’s worth of rich history, it introduces the major spheres of influence: the Moscow Patriarchate (MP) and the Ecumenical Patriarchate of Constantinople (EP). Furthermore, it briefly outlines the interplay of these Orthodox institutions in the 2014 annexation of Crimea, the 2018–2019 grant of autocephaly to the OCU, and the 2022 full-scale Russian invasion of Ukraine.

Part II then discusses in greater depth the process by which the OCU was granted autocephaly. It pays particular attention to how the process took on the forms and appearances of legal adjudication and the ways in which the process itself acted as international “soft law.” It then considers the reciprocal relationship between religious and secular international institutions, emphasizing how religious institutions borrow the forms and processes of the secular and, in turn, influence the function and legitimacy of secular institutions generally and the Russo-Ukrainian conflict in particular.

This Note concludes by briefly reflecting on how the religious front of the conflict might affect the future of the war and commenting on the often-overlooked significance of institutional religion in international law.

I. HISTORY

A. *The Emergence of the Jurisdictional Dispute*

This Section outlines the historical development of Orthodox influence in Ukraine, including the contest between two major poles of influence—the EP and the MP. It also considers how the creation of an independent OCU created a schism between the MP, which previously exercised ecclesiastical jurisdiction and control over Ukraine, and the other centers of Orthodox political influence, especially the more globally-oriented EP, which championed the OCU’s cause for independence. This Section also considers how Orthodoxy affected and was affected by the 2014 annexation of Crimea and the 2022 Russian invasion. It also introduces the formal process by which the OCU—in the midst of the ongoing violence—was granted autocephaly by the West-aligned EP in 2018–2019.

As stated above, both the internationalist²⁴ EP and the nationalist²⁵ MP—in competition for the center of influence in Eastern Orthodoxy²⁶—consider

22. Baderin, *supra* note 20, at 641.

23. *Id.* at 657.

24. See Fajfer & Rimestad, *supra* note 6, at 215-17 (citing, for example, the EP’s support of Turkish membership in the EU).

25. *Id.* at 219-21.

26. Bilge, *supra* note 13, at 99-101; see generally Fajfer & Rimestad, *supra* note 6.

Ukraine to be within its ecclesiastical territory and proper sphere of influence.²⁷ In other words, both consider Orthodox Christians within their boundaries to be subject to the clergy and church government appointed by their *own* respective church leaders. The legitimacy of these jurisdictional claims is a matter of legal history and analysis concerning whether the EP, the center of Orthodox legitimacy and so-called first among equals,²⁸ ever properly transferred jurisdiction over Ukraine to the ROC.²⁹

The medieval history of the Ukrainian people and territory is, of course, remarkably complex. The singular, sovereign nation of Ukraine today was then a series of different peoples under different spheres of influence—nothing like a monolithic modern state. Moreover, the story of Orthodoxy is largely coterminous with the story of the region's broader political alignments and realignments, uprisings, treaties, and wars in large part due to the radically different role that religion played in society and the state during this pre-liberal era. Indeed, to tell a comprehensive story of Orthodoxy in Ukraine would be to tell a comprehensive story of Eastern Europe writ large. Because of this complexity, this Note isolates only those discrete facts on which the later jurisdictional battles turn.

The central question is whether, in 1686, Ecumenical Patriarch Dionysius IV, by allowing the Kyiv metropolitan to be ordained by the Moscow Patriarchate, effectively and intentionally conceded part or all of Kyiv and what is now Ukrainian territory to the forebears of the modern MP. The issue of the quasi-legal determination of jurisdiction turns on an issue of fact and presents itself as subject to adversarial litigation. Ultimately, whether by practical necessity (with the EP preserving a claim to re-assert control or grant autocephaly) or affirmative acquiescence, the MP has exercised *de facto* control over the affairs of Ukrainian Orthodoxy ever since. As a result, for hundreds of years, the Orthodox church in what is now Ukraine operated under direction from Moscow in much the same way that much of what constitutes modern-day Ukraine was itself under the control of Russian and, later, Soviet imperial power centers.

The dispute over the legitimacy of this cession of the Metropolitanate of Kyiv, claimed by the MP as its justification for exercising religious control over Ukrainian Orthodox Christians, is a longstanding one, preceding the current war by at least a century. In 1924, the legitimacy and nature of this cession was brought into question by the EP, who declared that the “incorporation” of Kyiv (and others in Lithuania and Poland) into the Muscovite Church was “accomplished contrary to canon law, as also all that which was agreed upon regarding the full church autonomy of the Kyivan Metropolitan.”³⁰

27. Metreveli, *supra* note 5, at 7.

28. *Id.* In contrast, historical Orthodox hierarchies place the MP fifth among autocephalous churches, even though the MP is the largest. Bilge, *supra* note 13, at 98.

29. Dudra, *supra* note 1, at 138 (“The administrative structure of the Orthodox Church in Ukraine was formed within the framework of the Kiev Metropolis established between 976 and 998. Its metropolitans recognized the authority of the patriarch of Constantinople.”).

30. *Tomos of the Ecumenical Patriarchate of Constantinople* (Nov. 13, 1924), https://www.pangreek-ukrainianorthodoxarchdioceses.org/1924_tomos_of_autocephaly.html.

The cultural and political salience of Ukrainian autocephaly has been a pressing factor in Ukrainian politics since the collapse of the Soviet Union,³¹ when a newly independent Ukraine was tasked with generating a coherent national identity and sense of legitimate sovereignty. Beginning in the early 1990s, President Leonid Kravchuk of Ukraine appealed to the EP to recognize Ukrainian autocephaly.³² The movement for autocephaly then gained further momentum following the Orange Revolution.³³ National yearning for an independent church thus finds its roots in the re-establishment of an independent Ukraine.

As a practical matter, however, Ukraine's dominant Orthodox group after the collapse of the Soviet Union was the Ukrainian Orthodox Church (UOC-MP), a member of the Moscow Patriarchate and the ROC's Holy Synod (the church's primary administrative body).³⁴ Ukraine also makes up the second largest Orthodox population in the MP after Russia, and "two thirds of the parishes belonging to the Russian Patriarchate are located in Ukraine."³⁵

In theory, the charter for the UOC-MP provides it with broad powers of self-governance,³⁶ which the UOC-MP has cited in support for its claims of relative independence from Russian influence. As a practical matter, however, it has continued to generally align itself with Russian interests in Ukraine—much more than its counterpart, of course—and has been somewhat hostile towards the autocephalous OCU, as particularly evidenced by events since the 2014 Crimean invasion discussed below.

B. 2014 Invasion of Crimea

Tensions regarding legitimate claims to ecclesiastical jurisdiction over Ukraine were magnified in 2014 after Russia's invasion and illegal annexation of Crimea. The Crimean invasion also brought to the fore the degree to which Orthodox bodies acted as proxies for, and shared the interests of, state actors.

31. Even during the Soviet Union, of course, religious identity and exercise remained an important means of fostering and expressing political dissent or subversion to state atheism and Soviet totalitarianism. See, e.g., Maurice Glasman, *Inside Ukraine's Orthodox Heart*, NEW STATESMAN (Apr. 10, 2023), <https://www.newstatesman.com/politics/religion/2023/04/exploring-ukraine-orthodox-heart-deep-dive-politics-religion>.

32. Dudra, *supra* note 1, at 143.

33. Bilge, *supra* note 13, at 102; see also *id.* at 102-03 ("After his victory[,] Victor Yus[h]chenko, supported by the uncanonical churches, announced the creation of a united Ukrainian Orthodox Church as one of the priorities of his policy. The new president ordered that steps be taken to bring about dialogue [among] the jurisdictions. As soon as he took the power, the new president of Ukraine, Victor Yus[h]chenko, asked support from Patriarch Bartholomeos, for a united independent Ukrainian Orthodox Church.").

34. See Engjellushe Morina & Andrew Wilson, *Russia, Ukraine, and the Orthodox Church: Where Religion Meets Geopolitics and War*, EUR. COUNCIL ON FOREIGN RELS. (June 23, 2022), <https://ecfr.eu/article/russia-ukraine-and-the-orthodox-church-where-religion-meets-geopolitics-and-war>.

35. Bilge, *supra* note 13, at 101-02.

36. Vladislav Gordeev, *The Ukrainian Church of the Moscow Patriarchate Demanded the Return of the Crimea*, RBC (Aug. 18, 2014), <https://www.rbc.ru/society/18/08/2014/570420d59a794760d3d40c5f> (translated from Russian); *Ukrainian Orthodox Church*, PATRIARCHA.RU (Dec. 2, 2017), <http://www.patriarchia.ru/db/text/1802267.html>.

The invasion—and the institutional reaction within Orthodox bodies in the region—also laid the groundwork for the 2018–2019 schism and recognition of the autocephalous OCU.

From the beginning of the conflict, the tight nexus between Orthodoxy and the political legitimacy of the invasion was clear: the Russian Holy Synod (or assembly of MP clergymen) exhorted Ukrainians to accept the legitimacy of the Crimea annexation in 2014,³⁷ while stating the formal policy that it remained the prerogative for political leadership to determine the legitimacy of annexations.³⁸ In so doing, the MP Synod also invoked deeply religious-nationalist themes, speaking of Russian-Ukrainian unity in the register of Orthodoxy. Such invocations are a common tool of the current Patriarch of Moscow, Patriarch Kirill:

[L]et us hope that the mission of Russian soldiers to protect the freedom and identity of these people and their very lives will not meet with fierce resistance, which will lead to large-scale clashes. No one wants to shed blood and deepen those divisions that already exist among Orthodox people in the space of historical Russia.³⁹

Although Kirill apparently distanced himself from the Crimean annexation (failing, for example, to appear at President Putin's formal event announcing the annexation), he, like the Synod, used the language and institutional legitimacy of the MP, in an April 2014 sermon, to speak of the “gather[ing]” of Russia and the “creation of a great state”—the “*historical* Russia.”⁴⁰

The UOC-MP retained control over its properties in Russian-occupied territories immediately following the 2014 invasion and annexation. This retention led to a “balancing act” that allowed the UOC-MP to refrain from formally acknowledging the Russian annexation.⁴¹ The annexation, however, frayed relations between the UOC-MP and the MP,⁴² and it also revealed ideological rifts within the church: Metropolitan Onufriy, leader of the UOC-MP in the Metropolitan of Kyiv and all of Ukraine,⁴³ attempted to emphasize the church's existing supposed independence to assuage the growing outrage against Russian state action and, by extension, the deterioration of the MP's legitimacy among Ukrainians.⁴⁴ Another UOC-MP leader, on the other hand, speaking for the MP, exhorted Ukrainians not to protest the annexation or resist Russian

37. Gordeev, *supra* note 36.

38. Rimestad, *supra* note 15, at 171.

39. Gordeev, *supra* note 36.

40. *Sermon by His Holiness Patriarch Kirill on the Feast of the Annunciation of the Most Holy Theotokos in the Annunciation Cathedral of the Moscow Kremlin*, PATRIARCHA.RU (Apr. 7, 2014), <http://www.patriarchia.ru/db/text/3621126.html>.

41. Rimestad, *supra* note 15, at 171. As discussed below, this arguably nominal control over Crimean dioceses by the UOC-MP lasted until 2022. *The Ukrainian Church of the Moscow Patriarchate Demanded the Return of the Crimea*, RBC.RU (Aug. 18, 2014), <https://www.rbc.ru/society/18/08/2014/570420d59a794760d3d40c5f> (translated from Russian); Rimestad, *supra* note 15, at 170.

42. Gordeev, *supra* note 36.

43. Morina & Wilson, *supra* note 34 (“Amid the wider geopolitical tensions, that July the UOC-MP saw the death of its relatively ecumenical patriarch, Volodymyr, and his replacement by the more radical Onufriy[y], a strong supporter of Putin's re-imperializ[ing] ‘Russian World’ doctrine.”).

44. Gordeev, *supra* note 36.

soldiers.⁴⁵

It was also in 2014, in the wake of the Maidan protests, that momentum grew for the construction of a non-MP-aligned OCU,⁴⁶ leading to its eventual formation. It was *this* church in particular that would become the vehicle for the EP to grant Ukraine self-government rights by means of an autocephalous church.⁴⁷ The autocephaly of the OCU, while contested by MP-aligned Orthodox churches, has been rapidly accepted by Ukrainian Orthodox Christians themselves.

This acceptance should come as no surprise. As a general matter, since the fall of the Soviet Union, the MP has enjoyed much more widespread support from Orthodox adherents in post-Soviet nations than has the EP.⁴⁸ In 2016, however, although more Orthodox Christians in Ukraine recognized the MP as the higher authority in Orthodox than the EP (17% to 7%), a plurality of respondents stated that they saw the Patriarch of Kyiv as authoritative (46%).⁴⁹ Thus, even before the grant of autocephaly for the OCU by the EP, Ukrainian Orthodox Christians saw themselves as meaningfully independent from the MP or any other foreign ecclesiastical authority center, laying the groundwork for a rightful claim to ecclesiastical Orthodox independence and autocephaly just a few years later.

C. 2018–2019 Autocephaly and the *Tomos*

After the Russian annexation of Crimea, the need to push back—including by using the tools of ecclesiastical jurisdiction—became especially dire. Ukrainian state actors and politicians thus rallied around generating international support for an independent, autocephalous OCU. Such autocephaly could be recognized (or, conversely, created) through a *tomos*—an edict from an influential Orthodox patriarch declaring independence and church autonomy, much like a kind of legal writ.⁵⁰

Recognizing the importance of autocephaly to Ukraine, then-President Petro Poroshenko met with Ecumenical Patriarch Bartholomew to discuss autocephaly in 2018.⁵¹ According to Russian-aligned Orthodox media, Ukrainian nationalists not long after “seize[d]” churches belonging to the UOC-MP, apparently empowered by the President’s public alignment with the EP.⁵²

45. *Id.*

46. Morina & Wilson, *supra* note 34.

47. *Id.*

48. *Religious Belief and National Belonging in Central and Eastern Europe*, *supra* note 4.

49. *Id.*

50. VICTOR ROUDOMETOF, GLOBALIZATION AND ORTHODOX CHRISTIANITY: THE TRANSFORMATIONS OF A RELIGIOUS TRADITION 173 (2013).

51. *Ukrainian Lawmakers Back President’s Move To Obtain Autocephalous Status For Orthodox Church*, *supra* note 10 (also noting that Ukrainian political organs had been “trying to obtain autocephalous status for the Ukrainian Orthodox Church since 2016”); Dudra, *supra* note 1, at 148.

52. *Ecumenical Patriarch Sends Legates to Kiev, Begins Process of Autocephalization*, ORTHODOX CHRISTIANITY (Sept. 7, 2018), <https://orthochristian.com/115597.html>. This trend continues. Anna Voitenko & Max Hunder, *Ukrainian Orthodox Worshipers Gather in Kyiv Monastery as Eviction Looms*, REUTERS (Mar. 29, 2023); Antonia Zimmerman, *Kyiv Accuses Orthodox Church Leader of Justifying Russia’s Invasion*, POLITICO (Apr. 1, 2023), <https://www.politico.eu/article/kyiv-accuses->

Ukraine's parliament passed Resolution No. 2410-VIII, endorsing President Poroshenko's appeal to the EP.⁵³

Autocephaly, President Poroshenko remarked in a later address to the parliament, was a critical element of independence from Moscow.⁵⁴ He explained that because "the Kremlin regards the [MP] as one of the key tools of influence over Ukraine," autocephaly recognized by the EP was akin to membership in the EU or NATO.⁵⁵ Members of the People's Front coalition in the Rada also filed bills that would have allowed for the legal liquidation of the UOC-MP, further emphasizing Ukrainian state leaders' attempts to wield the state as an instrument of gaining ground on the religious battlefield.⁵⁶

The United States also made clear its institutional support for Ukrainian autocephaly. Secretary of State Mike Pompeo released a statement "urg[ing] the Church and state authorities to continue the process of creating the Ukrainian autocephalous Church" and reiterating U.S. support for "the promotion of religious freedom and the freedom of religious communities, including the Orthodox ones in Ukraine."⁵⁷ The United States affirmed this position by way of a statement by Samuel Brownback, the Ambassador-at-Large for International Religious Freedom at the State Department, in a meeting with the Chairman of the Verkhovna Rada.⁵⁸

During the meeting, the Rada Chairman, Andriy Parubiy, called the issuance of a *tomos* by the EP granting Ukrainian autocephaly "one of the key issues of the existence of the Ukrainian State itself."⁵⁹ In return, Ambassador Brownback stated that, should an autocephaly *tomos* be issued, the United States would support it and assist at the stage of its implementation.⁶⁰ Though the exact contours of this offer to assist were unclear, it was no doubt heard loud and clear in Moscow.

The *tomos* recognizing Ukrainian autocephaly was presented by the EP to the Primate of the OCU on January 6, 2019 and accompanied by a liturgical service attended by President Poroshenko, Rada Chairman Parubiy, and other governmental representatives.⁶¹ The *tomos* itself memorialized the political legitimacy of the Ukrainian state⁶² and formally established the OCU as

orthodox-church-leader-of-justifying-russias-invasion.

53. *Constitutional Court Not to Take Appeal Against Parliament's Address to Patriarch Bartholomew to Grant Autocephaly*, RELIGIOUS INFO. SERV. UKR. (Mar. 14, 2019), https://risu.ua/ksu-ne-vidkrivatime-konstituciynogo-provazhennya-shchodo-postanovi-vru-z-prohannyam-dovselenskogo-patriarha-nadati-ukrajini-tomos_n96959.

54. *Ukrainian Lawmakers Back President's Move To Obtain Autocephalous Status For Orthodox Church*, *supra* note 10 ("Poroshenko compared having an autocephalous church to Ukraine's aspirations to join the European Union and NATO, 'because the Kremlin regards the Russian [Orthodox] Church as one of the key tools of influence over Ukraine.'").

55. *Id.*

56. Dudra, *supra* note 1, at 147.

57. *Id.* at 150.

58. *United States to Support Ukraine's Tomos of Autocephaly Once Granted*, *supra* note 9.

59. *Id.*

60. *Id.*

61. *Ukraine Receives Tomos Officially and Forever*, RELIGIOUS INFO. SERV. UKR. (Jan. 6, 2019), https://risu.ua/en/ukraine-receives-tomos-officially-and-forever_n95590.

62. *Tomos of Autocephaly: The Full Text*, ORTHODOXY DIALOGUE (Jan. 16, 2019),

autocephalous, designating it the Most Holy Church of Ukraine.

The recognition of the OCU's autocephaly followed months of protest by the MP as the EP's intentions became increasingly clear. In September 2018, the EP sent a delegation of ecclesiastical officials to Ukraine consisting of an American and a Canadian to prepare the church for the *tomos*.⁶³ Recognizing the imminency of a decision, the MP accused the EP of "want[ing] to start the war"⁶⁴ and explicitly threatened to sever communion with Constantinople,⁶⁵ representing one of the largest fractures in the Christian world in a millennium.⁶⁶ The MP Synod, the highest authority of the church, declared the action of sending the delegation "a gross violation of the church canons" by Ecumenical Patriarch Bartholomew himself.⁶⁷

The MP followed up on its threat, breaking communion with the EP, consequently creating a formal schism in Eastern Orthodoxy. The EP maintains, however, that this break of communion is purely one-sided, as the Church of Constantinople maintains unreciprocated communion with Moscow and "the pious Russian people."⁶⁸ The MP cited the EP's violation of what it perceived to be the MP's ecclesiastical jurisdiction to retaliate and "violate[] the ecclesiastical territory and jurisdiction" of foreign patriarchates, including the Church of Alexandria and All Africa,⁶⁹ attempting to siphon off EP-aligned Orthodox membership and undermine its influence abroad.⁷⁰ In this way, the MP engaged

<https://orthodoxyindialogue.com/2019/01/16/tomos-of-autocephaly-the-full-text/> (stating that the "devout and divinely-protected country of Ukraine has been fortified and magnified by heavenly providence, while also acquiring comprehensive political independence" and "declar[ing] that the entire Orthodox Church contained within the boundaries of the politically constituted and wholly independent State of Ukraine . . . autocephalous, independent, and self-administered").

63. *UOC (MP) Hierarchs Concerned About Constantinople's Activity in Ukraine*, RELIGIOUS INFO. SERV. UKR. (June 24, 2015), https://risu.ua/en/uoc-mp-hierarchs-concerned-about-constantinople-s-activity-in-ukraine_n74878; *UOC DECR Statement in Connection with Appointment by Patriarchate of Constantinople of Exarchs in Kyiv*, DEP'T FOR EXTERNAL CHURCH [MP] RELATIONS (Sept. 8, 2018), <https://web.archive.org/web/20180919011415/https://vzcz.church.ua/en/2018/09/08/uoc-decr-statement-in-connection-with-appointment-by-patriarchate-of-constantinople-of-exarchs-in-kyiv>. This move was condemned by the UOC-MP. *JOURNALS of a Meeting of the Holy Synod of the Moscow Patriarchate on September 14, 2018*, SYNOD.COM (Sept. 14, 2018), https://www.synod.com/synod/eng2018/20180914_enmoscowsynod.html.

64. *Moscow Patriarchate — "Patriarch Bartholomew will Answer before God and History"*, YOUTUBE (Sept. 9, 2018), <https://www.youtube.com/watch?v=fnhooRbXc58> (at 2:37).

65. *Id.* at 3:14. In a practical sense, severing communion would mean an end to formal amicable relations between the leaders of the two churches, as well as an end to each church recognizing the legitimacy of the others' rites. This formal disaffiliation may seem largely symbolic, but it actually serves to reify very real spheres of influence in the Orthodox world and among adherents to the faiths.

66. David M. Herszenhorn, *Russian Orthodox Church Breaks with Constantinople*, POLITICO (Oct. 15, 2018), <https://www.politico.eu/article/russian-orthodox-church-breaks-with-constantinople>.

67. *Russian Orthodox Church Holy Synod Statement as of September 8, 2018*, DEP'T FOR EXTERNAL CHURCH [MP] RELATIONS (Sept. 8, 2018), <https://mospat.ru/en/news/47221/>; see also *Russian Orthodox Church Warns About Response to Appointment by Ecumenical Patriarch of his Exarchs in Ukraine*, INTERFAX RELIGION (Sept. 7, 2018), <http://www.interfax-religion.com/?act=news&div=14450>.

68. Luke Coppen, *Russian Orthodox Church Warns About Response to Appointment by Ecumenical Patriarch of His Exarchs in Ukraine*, PILLAR (Oct. 20, 2022), <https://www.pillaratholic.com/dialogue-and-reconciliation-are-not-optional-for-us-an-interview-with-ecumenical-patriarch-bartholomew>.

69. *Id.*

70. Morina & Wilson, *supra* note 34.

in a form of ecclesiastical *imperialism* and *domination*⁷¹—imposing itself and its own ecclesiastical authority in these regions while discounting or dismissing the legitimate rights to self-governance of Orthodox churches and adherents there.

In March 2019, the Constitutional Court of Ukraine denied a request by forty-seven Opposition Bloc Rada deputies—successors to President Viktor Yanukovych’s Kremlin-aligned Party of Regions⁷²—to declare the Rada’s support for Ukrainian autocephaly incompatible with constitutional principles of disestablishment.⁷³ Highlighting the law-like nature of church institutional decision-making, the opposition framed the disestablishment issue as “state interference in church affairs.”⁷⁴

The Constitutional Court grounded its denial in analysis akin to the political question doctrine, finding that the Resolution embraced “political [issues] and should be resolved within the terms of reference and political expediency of the relevant bodies of state authority.” It added that the Rada “can make political decisions to express its position and evaluate specific events, facts[,] and circumstances.”⁷⁵ While framed in the register of “political” questions, this decision reflects secular courts’ hesitancy to inject themselves in a matter otherwise reserved to both political branches *and* the church. This is essentially a state acknowledgement of the legal legitimacy of ecclesiastical jurisdiction.⁷⁶

D. 2022 Invasion

The EP’s decision to grant autocephaly to the OCU quickly sparked backlash in Russia. President Putin called the decision a weapon of “mass destruction” against Russian identity.⁷⁷ Even more explicitly, the schism in Ukraine has been cited as a cause for the invasion of Ukraine by the Russian-

71. Coppen, *supra* note 68.

72. *Ukrainian Lawmakers Back President’s Move To Obtain Autocephalous Status For Orthodox Church*, *supra* note 10.

73. *Constitutional Court Not to Take Appeal Against Parliament’s Address to Patriarch Bartholomew to Grant Autocephaly*, *supra* note 53. Other groups also sued in hopes of judicial action against the Resolution. *Id.*

74. *Id.*; *Ukrainian Lawmakers Back President’s Move To Obtain Autocephalous Status For Orthodox Church*, *supra* note 10 (“The presidential campaign begins with the most sensitive topic for society: the issue of religion,” [Opposition Bloc leader Yuriy Boyko] said. “The state has no right to interfere in religious matters.”).

75. *Ukraine’s Constitutional Court Refuses to Consider Legality of Rada Decision to Support Autocephaly Tomos*, INTERFAX UKR. (Mar. 13, 2019), <https://en.interfax.com.ua/news/general/572100.html>.

76. While a full discussion of the American church question doctrine is well outside the remit of this Note, I point to *Watson v. Jones*, 80 U.S. 679 (1871) for the general proposition that American courts do—or aspire to—respect the autonomy and jurisdiction of religious adjudicatory bodies to resolve certain matters of internal administration and affairs, even when the consequences of such internal autonomy might spill over into extra-religious legal matters. *See id.* at 727 (“[W]henver the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them.”). American church autonomy doctrine is alive and well, and probably faces a bright future. *See generally* *Hosanna-Tabor v. EEOC*, 565 U.S. 171 (2012).

77. *Russia’s Religious War in Ukraine*, CHRISTIAN SCI. MONITOR (Oct. 3, 2022), <https://www.csmonitor.com/Commentary/the-monitors-view/2022/1003/Russia-s-religious-war-in-Ukraine>.

aligned Orthodox hierarchy.⁷⁸

Following both the Ukrainian autocephaly *tomos* and the full-scale Russian invasion of Ukraine in February 2022, the EP accused the MP of “stoop[ing] to the level” of submitting to the “political ambitions of the Russian Federation, even endorsing and seemingly blessing [the] cruel invasion and unjustifiable bloodshed.”⁷⁹ The EP has continued to condemn the invasion and “appealed to the Patriarch of Moscow that he separate himself from political crimes, even if it means stepping down from his throne.”⁸⁰

In the months after the invasion, church participation in Ukraine, including among Ukrainian Orthodoxy, saw a modest rise.⁸¹ Moreover, the autocephalous OCU had been experiencing significant growth even before the February invasion, which has only been further accelerated by Russian aggression. According to polling data from the Razumkov Centre:

Before the war began in February, 40[%] of Ukrainian believers in one independent poll backed the Orthodox Church of Ukraine and 20[%] the UOC-MP. A further 33[%] called themselves “just Orthodox.” But now, the Orthodox Church of Ukraine claims the support of 52[%] of people, with the figure suggesting “just Orthodox” down to 11[%], and followers of the UOC-MP at just 4[%]. An opinion poll in April showed 74[%] of Ukrainians wanted the UOC-MP to cut its ties with Russia and 51[%] wanted it banned.⁸²

In competition with the UOC-MP, the OCU has rapidly become a vehicle for imagining Ukrainian national identity. The same Razumkov Centre polling indicates that a plurality of respondents identified the OCU as a church or religion to which a person should belong in order to be considered Ukrainian.⁸³ Many respondents even believed that the OCU received preferential treatment by the Ukrainian state.⁸⁴ Of the minority of Ukrainians who supported the creation of a state church,⁸⁵ most indicated that they would grant national religion status to the OCU.⁸⁶

Unsurprisingly, the leader of the OCU had stronger words, declaring that the invaders “will receive as promised, by God, no mercy and eternal suffering for their crimes and unmerciful actions,” even comparing President Putin to

78. UOC (MP): “Activities of the Previous Government and the OCU Became One of the Reasons for the Military Invasion of Ukraine”, RADIO SVOBODA (May 12, 2022), <https://www.radiosvoboda.org/a/news-upts-synod-viyna-rf/31846912.html> (translated from Ukrainian).

79. Coppen, *supra* note 68 (Bartholomew continued, “We have repeatedly condemned the aggression and violence, just as we have fervently and fraternally appealed to the Patriarch of Moscow that he separate himself from political crimes, even if it means stepping down from his throne.”).

80. *Id.*

81. *Baptisms and Church Attendance on the Rise in Ukraine*, CNE (Oct. 18, 2022), <https://cne.news/artikel/1863-baptisms-and-church-attendance-on-the-rise-in-ukraine>.

82. *Russia, Ukraine, and the Orthodox Church: Where Religion Meets Geopolitics and War*, *supra* note 34; RAZUMKOV, SPECIFICS OF RELIGIOUS AND CHURCH SELF-DETERMINATION OF CITIZENS OF UKRAINE: TRENDS 2000–2021, 41–45 (2021), https://razumkov.org.ua/uploads/article/2021_Religiya_eng.pdf.

83. *Id.* at 36. This was coupled with a recognition that the OCU maintains a special relationship with the state. *Id.* at 101.

84. *Id.* at 101.

85. *Cf. id.* at 107.

86. *Id.* at 104–05.

Adolf Hitler.⁸⁷ Even among those who did not reorient towards the OCU as the center of legitimate Ukrainian Orthodoxy, the 2022 invasion undermined the MP's operations and legitimacy in Ukraine. Perhaps in response to this issue, immediately following the Russian invasion of Ukraine in February 2022, Metropolitan Onufriy of the UOC-MP denounced the war as unjustified and "a repetition of the sin of Cain."⁸⁸

In March 2022, the Verkhovna Rada introduced two bills that threatened to ban the UOC-MP,⁸⁹ whose survival in Ukraine now seems tenuous. In May 2022, the UOC-MP—again, previously a member of the Russian Holy Synod and loyal to the MP—condemned the Russian invasion and Patriarch Kirill's position⁹⁰ and affirmed its "complete" independence from the MP,⁹¹ claiming that its relations with the MP had been "complicated or absent" since the invasion.⁹² Such condemning statements, if nothing else, may be somewhat compelled by the fact that "ordinary Ukrainians seem to be rapidly turning away" from the UOC-MP.⁹³

But the UOC-MP's declaration of autonomy from the MP may not reflect meaningful independence from Russian interests or MP influence. Some Ukrainian critics, in fact, called the statement "a little rain from a large cloud."⁹⁴ According to the MP, the UOC-MP released its grasp over Crimea and positioned itself against the autocephalous, Constantinople-organized OCU, whose legitimacy it denied and whose existence "only deepened misunderstandings and led to physical confrontation."⁹⁵ The UOC-MP even accused the OCU of seizing churches and forcing transfers of UOC-MP

87. Pentin, *supra* note 3; *Address of Metropolitan Epiphanius*, POMISNA.INFO (Feb. 27, 2022), <https://www.pomisna.info/uk/vsi-novyny/zvernennya-mytopolyta-epifaniya-27-lyutogo-2022-r> (OCU website, translated from Ukrainian).

88. Pentin, *supra* note 3; *Appeal of His Beatitude Metropolitan of Kyiv and All Ukraine Onufriy to the Faithful and the Citizens of Ukraine*, UKR. ORTHODOX CHURCH (Feb. 27, 2022), <https://news.church.ua/2022/02/24/obrashhenie-blazhennejshogo-mitropolita-kievskogo-vseya-ukrainy-onufriya-k-vernym-grazhdanam-ukrainy/?lang=en>.

89. Morina & Wilson, *supra* note 34.

90. *Ukrainian Orthodox Church, Loyal to Russia Since 2019 Schism, Now Cuts Ties Over War*, RADIOFREE EUR. RADIOLIBERTY (May 27, 2022), <https://www.rferl.org/a/orthodox-church-kirill-war-russia/31872141.html>; Efi Efthimiou, *Pressure on Kirill Intensifies — 400 Priests Call for Condemnation by World Orthodoxy*, ORTHODOX TIMES (Apr. 14, 2022), <https://orthodoxtimes.com/pressure-on-kirill-intensifies-400-priests-call-for-condemnation-by-world-orthodoxy>; *More Than 400 Parishes Have Left the UOC-MP Since the Russian Invasion*, BBC UKR. (May 24, 2022), <https://www.bbc.com/ukrainian/news-61549903>.

91. *Resolution of the Council of the Ukrainian Orthodox Church of May 27, 2022*, RASKOLAM.NET (May 27, 2022), <https://raskolam.net/en/53255-postanova-soboru-ukrainskoipravoslavnoi-cerkvi-vid-27-travnja-2022-roku>. Again, it is meaningful that a plurality of Ukrainian Orthodox Christians already saw the Metropolitan of Kyiv as the highest authority of Orthodoxy. *Religious Belief and National Belonging in Central and Eastern Europe*, *supra* note 4.

92. *Ukrainian Orthodox Church, Loyal To Russia Since 2019 Schism, Now Cuts Ties Over War*, RADIOFREE EUR. RADIOLIBERTY (May 27, 2022), <https://www.rferl.org/a/orthodox-church-kirill-war-russia/31872141.html>.

93. Morina & Wilson, *supra* note 34.

94. "To Condemn Is Not to Sever the Connection": *The OCU Commented on the Decision of the Council of the UOC (MP) on the Disagreement with the Russian Patriarch Kirill*, RADIO SVOBODA (May 27, 2022), <https://www.radiosvoboda.org/a/news-tserkva-ptsu-sobor-mp-reaktsiya/31872062.html>.

95. *Resolution of the Council of the Ukrainian Orthodox Church of May 27, 2022*, *supra* note 91.

parishes.⁹⁶ Unsurprisingly, Russia blames Western forces like the United States for Ukraine's skepticism of, or hostility towards, Russian religious influence in Ukraine.⁹⁷

Beyond accusing its sister church of provoking physical violence and thereby justifying the Russian use of military force, the May 2022 Council action of the UOC-MP actively legitimized the Russian occupation and legal claims over Crimea. The diocesan bishops of the occupied-Crimean dioceses (Dzhankoy, Simferopol, and Feodosiya), the MP claimed, purportedly appealed to the Russian Holy Synod to be accepted under its direct jurisdiction,⁹⁸ invoking the Decree of the Council of the UOC-MP that granted diocesan bishops the right to independently make decisions "on certain issues of diocesan life that fall within the competence of the Holy Synod."⁹⁹ As a result, the Metropolitanate of Crimea was created under the claimed jurisdiction of the MP.¹⁰⁰

As elsewhere, canonical territory and ecclesiastical jurisdiction are proxies for political jurisdiction in the Russo-Ukrainian war. Because Russia's invasion of Ukraine has been *internally* justified on cultural and religious terms,¹⁰¹ the EP's determination of Ukrainian autocephaly should be understood to undermine Russians' confidence in their nation's rightful hegemony of Ukraine.¹⁰²

The Ukrainian state injected itself even more directly into this dynamic in the spring of 2023 when the Ukrainian security services searched the home of UOC-MP leader Pavel Lebed, accusing him of justifying the Russian invasion and violating criminal laws.¹⁰³ As the war drags on, it is likely that state involvement in the ecclesiastical front of the war—including seizing church property¹⁰⁴ and wielding the criminal code against religious leaders—will only continue to escalate.

96. *Id.*

97. *Russia Says US Behind Ukraine's Pressure on Moscow-Linked Orthodox Church*, REUTERS (Apr. 2, 2023).

98. *The Simferopol, Dzhankoy and Feodosiya Eparchies Were Accepted Under the Jurisdiction of the Patriarch and the Synod of the Russian Orthodox Church and Became Part of the Established Crimean Metropolis*, PATRIARCHIA.RU (June 7, 2022), <http://www.patriarchia.ru/db/text/5934581.html> (translated from Russian); *Journals of the Holy Synod of June 7, 2022*, PATRIARCHIA.RU, <http://www.patriarchia.ru/db/text/5934527.html>.

99. *The Simferopol, Dzhankoy and Feodosiya Eparchies Were Accepted Under the Jurisdiction of the Patriarch and the Synod of the Russian Orthodox Church and Became Part of the Established Crimean Metropolis*, *supra* note 98.

100. Morina & Wilson, *supra* note 34.

101. Erin Cunningham, *How Russia's War in Ukraine is Dividing the Orthodox Christian World*, WASH. POST (Apr. 24, 2022), <https://www.washingtonpost.com/world/2022/04/24/russia-ukraine-orthodox-church/>.

102. *Russia's Religious War in Ukraine*, *supra* note 77 ("In a speech on Sept. 30, Mr. Putin claimed 'there is nothing stronger than the determination of millions of people who, by their culture, religion, traditions, and language, consider themselves part of Russia.'"). It should also be kept in mind that 78% of Ukrainians and 71% of Russians identify as Orthodox Christian. *Religious Belief and National Belonging in Central and Eastern*, *supra* note 4.

103. Antonia Zimmerman, *Kyiv Accuses Orthodox Church Leader of Justifying Russia's Invasion*, POLITICO (Apr. 1, 2023), <https://www.politico.eu/article/kyiv-accuses-orthodox-church-leader-of-justifying-russias-invasion>.

104. See, e.g., *supra* note 52 and accompanying text.

II. ORTHODOXY AND INTERNATIONAL LAW

A. Ecclesiastical Jurisdiction as International Law

It is uncontroversial that as the Ukrainian project of “derussification”¹⁰⁵ continues, the outcome of the war will almost certainly determine the outcome of the battle between the two canonical Orthodox churches of Ukraine,¹⁰⁶ especially given the increasingly strong bonds between the autocephalous OCU and the Ukrainian state. Far less appreciated, however, is the reality that gains and losses on the ecclesiastical front, including via decisions made by transnational religious institutions resembling international religious adjudicatory bodies, may themselves affect the outcome of the war.

The ability of non-state actors like NGOs to generate “soft law”¹⁰⁷ is often taken for granted; what is missing, however, is a more sober contemplation of the role of religious institutions to inform international and transnational actors’ expectations and claims to legitimacy.

That religion is not generally considered an operative force in international law may be the product of the conception of law as secular and public, in contrast to religion, which is or ought to be primarily *personal*.¹⁰⁸ But in modern times, international norm creation might be expected to be increasingly decentralized away from formal, *per se* international legal bodies as the global order “deteriorat[es] before our eyes.”¹⁰⁹ Meanwhile, other norms and institutions—such as religious institutions that predate and form the deep ideological foundations of international law¹¹⁰—can be expected to take more significant roles in forming transnational norms and influencing international norms and the course of conflicts.¹¹¹

Unfortunately, a preoccupation with “privatiz[ing] or nationaliz[ing]”¹¹²

105. *Ukraine Restricts Russian Books and Music in Latest Step of “Derussification”*, GUARDIAN (Jun. 19, 2022), <https://www.theguardian.com/world/2022/jun/20/ukraine-restricts-russian-books-and-music-in-latest-step-of-derussification>.

106. Morina & Wilson, *supra* note 34; Pentin, *supra* note 3; Lehnen, *supra* note 19.

107. See Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT’L ORG. 421 (2000); Daniel C. Esty & Nathan de Arriba-Sellier, *Zeroing in on Net-Zero: From Soft Law to Hard Law in Corporate Climate Change Pledges*, 94 COLO. L. REV. 435, 444 n.33 (2023); Anna Di Robilant, *Genealogies of Soft Law*, 54 AM. J. COMP. L. 499, 499-500 (2006); Christine M. Chinkin, *The Challenge of Soft Law: Development and Change in International Law*, 38 INT’L & COMP. L.Q. 850, 851 (1989).

108. Rimestad, *supra* note 15, at 158; see also T. Jeremy Gunn, *The Complexity of Religion and the Definition of Religion in International Law*, 16 HARV. HUM. RTS. J. 189 (2003).

109. See Dani Rodrik & Stephen M. Walt, *How to Build a Better Order*, 101 FOREIGN AFFS. 142 (2022); Melissa J. Durkee, *The Pledging World Order*, 48 YALE J. INT’L L. 1, 5 (2023); see also James N. Rosenau, *Governance, Order, and Change in World Politics*, in GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS (James M. Rosenau & Ernst-Otto Czempiel eds., 1992).

110. Baderin, *supra* note 20, at 637, 640-41; Harold Hongju Koh, *Why Do Nations Obey International Law*, 106 YALE L.J. 2599, 2604-07 (1997); ARTHUR NUSSBAUM, A CONCISE HISTORY OF THE LAW OF NATIONS 24 (1947); David J. Bederman, *Religion and the Sources of International Law in Antiquity*, in THE INFLUENCE OF RELIGION ON THE DEVELOPMENT OF INTERNATIONAL LAW 3 (Mark V. Janis ed., 1991); MICHAEL C. WILLIAMS, THE REALIST TRADITION AND THE LIMITS OF INTERNATIONAL RELATIONS 33-36 (2005).

111. See Durkee, *supra* note 109, at 42-43; see generally Gunn, *supra* note 108.

112. SCOTT M. THOMAS, THE GLOBAL RESURGENCE OF RELIGION AND THE TRANSFORMATION

religion under a separationist-normative view of international order risks blinding observers to this reality. As such, this Note seeks to broaden the scope of the international legal conversation and invites greater inquiry into the role played by religion—not just individual religious beliefs or affiliations, but also institutional religious actors—in international relations and law.

Orthodox Christianity's prominent position in the Russo-Ukrainian war serves as a case study for such institutional religious influence, where transnational ecclesiastical leaders have employed formal adjudicatory and legislative procedures to generate international norms and will, justify claims to independence or control, and work with state leaders to generate coherent national and cultural identities. Challenging Western ideals of a clear division between church and state (or relatedly, expectations of increasing secularization among developed countries), Orthodox Christianity's role in the Russo-Ukrainian war demonstrates that religious institutions and leaders not only affect individuals' sense of religiosity or passively reflect the political realities around them, but can themselves actively influence the body politic, including the course of wars and international relations.

The best way to understand the impacts of, and processes behind, the Russo-Ukrainian Orthodox schism is to frame it as one of international law and transnational lawmaking, with a special emphasis on the decision by the EP to grant Ukrainian canonical-jurisdictional independence. The *tomos* and the document justifying it (*The Documents Speak*¹¹³) take on the form and employ the methods of secular legal adjudication: using legal language, employing legalistic, secular-jurisdictional terms of art, and mobilizing legal justifications for the exercise of sovereignty akin to those seen in the opinions of international courts.

That religious norms and territorial jurisdiction informed the origins and development of law in general and international law in particular is not a tremendously controversial proposition;¹¹⁴ this situation is interesting, however, for demonstrating both the *continued* influence of religion in international law and the *reciprocal* nature of this relationship.¹¹⁵ In short, it provides an example of a transnational religious body acting as an international lawmaking authority to materially shift international relations. That “religion and international law are identical in [some] ways”¹¹⁶ needs to be teased out and better illustrated or theorized to understand religious institutions' ability to influence transnational behavior and vice versa.¹¹⁷

OF INTERNATIONAL RELATIONS 151 (2005).

113. ECUMENICAL PATRIARCHATE, THE ECUMENICAL THRONE AND THE CHURCH OF UKRAINE: THE DOCUMENTS SPEAK (Sept. 2018), <https://www.goarch.org/documents/32058/4830467/The+Ecumenical+Throne+and+the+Church+of+Ukraine+%28ENGLISH%29.pdf> [hereinafter DOCUMENTS SPEAK].

114. See Baderin, *supra* note 20, at 639–41.

115. For one case study of the other side of this reciprocal relationship, that is, of evolving international legal norms affecting institutional religious behavior, see Nathan B. Oman, *International Legal Experience and the Mormon Theology of the State, 1945–2012*, 100 IOWA L. REV. 715, 742 (2015).

116. Baderin, *supra* note 20, at 639.

117. See, e.g., Carolyn Evans, *The Double-Edged Sword*, 6 MEL. J. INT'L L. 1, 2 (2005).

Because there is no pan-Orthodox adjudicatory body, the act of interpreting canonical law to assert jurisdiction is both interpretive and assertive.¹¹⁸ Thus, the careful tracing of lineages and parsing of centuries-old language, as exemplified in the EP's justification for asserting jurisdiction over Ukraine (particularly in *The Documents Speak*), was a legalistic way to outmaneuver the practical challenges of granting autocephaly to a church rife with internal divisions and lacking the consent of the Orthodox clergy.¹¹⁹ Indeed, this international norm-based adjudication relied on the same sorts of analysis employed by international tribunals.

B. *The Basis for Ukrainian Autocephaly*

1. *Jurisdiction*

The EP's judgment explaining the decision to recognize Ukrainian autocephaly, *The Ecumenical Throne and the Church of Ukraine: The Documents Speak* (mentioned previously), is structured like a legal opinion justifying a court judgment. The EP's argument, in fact, employs a sort of historical-originalist analysis to assert the legitimacy of its jurisdiction to resolve the dispute in the first place.¹²⁰ Historically, this jurisdiction was asserted by the EP, based on its position as first among equals, granting the Patriarch "the right to establish a court of final appeal for any case from anywhere in the Orthodox world" as well as a veto over the grant of autocephaly to a church.¹²¹ In contrast, the MP claims that this special authority of the EP perished with the Byzantine empire and that its primary status is symbolic.¹²²

In some sense, however, the EP seems to take jurisdiction for granted by claiming a sort of *universal* jurisdiction over all Orthodox churches—"just as it does for all Russians, Belarusians[,] and other peoples in the broader region"¹²³—as a result of the Metropolis of Russia's recording as an eleventh-century EP eparchy (province).¹²⁴ Because the EP defined the boundaries of the Church of Russia by elevating it to the status of Patriarchate in 1589, it was the ultimate arbiter of any subsequent changes to its jurisdiction.¹²⁵ The EP further supports its claim to authority by pointing to "[o]ne of the basic axioms of jurisprudence," namely "the principle according to which the authority that

118. Fajfer & Rimestad, *supra* note 6, at 222.

119. See Dudra, *supra* note 1, at 147.

120. DOCUMENTS SPEAK, *supra* note 113, at 4-8; see also Konstantinos Vetochnikov, *La "Concession" de la Métropole de Kyiv au Patriarche de Moscou en 1686: Analyse Canonique*, PROCEEDINGS OF THE 23RD INTERNATIONAL CONGRESS OF BYZANTINE STUDIES, BELGRADE 780-84 (2016) (French).

121. Bilge, *supra* note 13, at 98; Serge Keleher, *Orthodox Rivalry in the Twentieth Century: Moscow Versus Constantinople*, 25 RELIGION, STATE AND SOC'Y 125-37 (1997). Controversy regarding the drawing of canonical boundaries, as well as the granting of autocephaly, predates the Ukraine controversy, however, and there is no absolute consensus among Orthodox churches regarding proper procedure. Dudra, *supra* note 1, at 142.

122. Bilge, *supra* note 13, at 99.

123. DOCUMENTS SPEAK, *supra* note 113, at 4.

124. *Id.*

125. *Id.* at 17.

issues an Act has absolute priority in the interpretation of that Act.”¹²⁶ Thus, it was the prerogative of the EP to properly maintain *interpretive* authority as the proper body of adjudication.¹²⁷

The EP’s judgment tracks the early administration of the Orthodox faith in the region under the metropolitans of “Kyiv and all Russia”¹²⁸ and recounts how the “metropolitans, bishops, clergy, nobility[,] and all the people of Ukraine intensely rejected” integration into the Patriarchate of Moscow.¹²⁹ The EP thus frames sixteenth-century consecrations of Kyivan Ukrainians by the MP as violations not only of canonical law (citing numerous canons), but of some variant of popular sovereignty.¹³⁰

2. Intent and Purpose

Having established its claim to jurisdiction to hear the issue of canonical territory, the EP’s judgment on substantive grounds declares that jurisdiction was not ceded for two reasons. First, *The Documents Speak* letter considers history and statements by supposedly authoritative figures in formulating the 1686 letter. It argues that the consecration of Kyivan and Ukrainian leaders by the MP was merely a matter of economy, acceptably bending the canonical rules in a time of necessity, during the wars between the Ottoman and Russian empires, and thus not a legitimate transfer of control.¹³¹

More to the point, the EP points to evidence that a “mediator ambassador” from Jerusalem—whom the EP claims facilitated conversation regarding jurisdiction over Kyiv among the MP, Metropolitan Gideon of Kyiv, the Russian royal family, and Ecumenical Patriarchate Dionysius IV¹³²—stated that he declared “to grant . . . Kyiv *in trust* (ἐπιτροπικῶς) to the Moscovite due to the prevailing tyranny, until the day comes for divine reckoning.”¹³³ This language about a trust, the EP argues, reveals a temporary, conditional license (on the basis of practicality and, ultimately, to prevent the Latinization of the region¹³⁴) to the

126. *Id.* at 22.

127. *Id.*

128. *Id.* at 4-5.

129. *Id.* at 5-6.

130. *Id.* at 6, 18-19.

131. *Id.* at 9; *see also id.* at 30-31 (“We adopted a manner of condescension in accordance with the very old custom and granted to him such permission for reasons of οἰκονομία.”); Konstantinos Vietochnikov, “Transfer” of the Metropolitanate of Kyiv to the Patriarchate of Moscow in 1686 *Decision About the “Subordination” of Metropolitanate of Kyiv to the Patriarch of Moscow, in JURISDICTIONAL STATUS OF THE KYIV ORTHODOX METROPOLITANATE IN 1686: THEOLOGY, CANON LAW AND THE CULTURAL AND HISTORICAL CONTEXT* 67 (2019) (“Many documents tell that the granting of permission to ordain the Metropolitan of Kyiv by the Patriarch of Moscow was granted not according to the canons, but according to economy (κατ’ οἰκονομίαν), that is, not according to the canons, but contrary to them, by way of canonical dispensation.”).

132. DOCUMENTS SPEAK, *supra* note 113, at 7-9.

133. *Id.* at 9 (citing PATRIARCH DOSITHEOS OF JERUSALEM, 6 HISTORY OF THE PATRIARCHS OF JERUSALEM, BOOK XI, 28, 240 (1983)); *see also* DOCUMENTS SPEAK, *supra* note 113, at 14 (citing KALLINIKOS DELIKANIS, 3 OFFICIAL ECCLESIASTICAL DOCUMENTS OF THE ECUMENICAL PATRIARCHATE 24 (1905)). *The Documents Speak* apparently fails, however, to grapple with the “until the day comes for divine reckoning” portion of Patriarchate Dositheos of Jerusalem’s statement.

134. DOCUMENTS SPEAK, *supra* note 113, at 29, citing from the letter:

[I]nasmuch as the Eparchy of Kyiv is subjected to the supreme and most holy Ecumenical

MP to ecclesiastically manage Kyiv and its territory rather than a true jurisdictional cession,¹³⁵ which one scholar claims never happened prior to 1792 in Orthodoxy.¹³⁶ The EP states that the letter was most likely based on a previous *temporary* grant of ordination authority, further bolstering its original intent argument.¹³⁷

Second, the EP points to the text of the 1686 letter itself to narrowly interpret the term “subjection,” used in relation to the Metropolis of Kyiv to the MP. Specifically, the EP argues that the term was restricted to limited “permission to ordain” the Kyivan Metropolitan: “[S]o that the most holy eparchy of Kyiv may be *subjected* to the most holy patriarchal throne of the great and God-saved city of Moscow, *namely* by ordaining the Metropolitan of Kyiv there, whenever such need arises.”¹³⁸

The EP argues that such ordination power was, in the first place, limited by the fact that the Kyiv clergy retained power to elect their own Metropolitan.¹³⁹ This, in turn, limited the MP’s control over ordination of Ukrainian clergy.¹⁴⁰ The autonomy of Kyivan Orthodox parishioners, therefore, was a “condition” for the temporary, limited subjection of the Metropolis of Kyiv to the MP, ultimately imposed by the authoritative EP.¹⁴¹

Similarly, the title of the 1686 letter—*Letter of Issue*—classifies the letter as a category of dispute resolution within Orthodoxy. Although its argument is not totally elucidated, the EP claims that “issue” is a technical term and, unlike

Throne of Constantinople, it would therefore always have received from this throne the ordination of its hierarch in accordance with the command of the sacred canons; however, inasmuch as this metropolis has been vacant for a number of years now, while much time has also elapsed since the ordination of its authentic hierarch because of certain battles transpiring between the two vast empires; and inasmuch as this moment and occasion has been expediently seized by the enemy of the right, true, holy and blameless faith of Orthodox Christians, sowing weeds and thorns among the wheat (that is to say, within Orthodoxy), which risks becoming subdued by foreign and hostile mentalities.

135. *Id.* at 18 (“That is to say, this permission involved a temporary character and was enforceable so long as the reasons for which it was granted still prevailed.”).

136. *The See of Kyiv Never Transferred to Moscow, Constantin Vetochnikov Says*, RELIGIOUS INFO. SERV. UKR. (Dec. 27, 2016), https://risu.ua/en/the-see-of-kyiv-never-transferred-to-moscow-constantin-vetochnikov-says_n82719. Further, Konstantinos Vietochnikov argues that the “subordination” relationship created in the letter is limited by the verb “*ανατίθημι*,” which means “entrust” or “assign” in a limited sense. Vietochnikov, *supra* note 131, at 57-58.

137. DOCUMENTS SPEAK, *supra* note 113, at 13 n.9.

138. *Id.* at 9-10 (emphasis added).

139. *See id.* at 29 (“grant[ing] permission to His Beatitude the Patriarch of Moscow to ordain the Metropolitan of Kyiv whenever this metropolis is deprived of an authentic hierarch, or in the case where its acting hierarch—*duly elected in that eparchy* by its own bishops, archimandrites, abbots of its holy monasteries, and others”); *see also id.* at 30.

That the most holy Eparchy of Kyiv should be subjected to the most holy patriarchal throne of . . . Moscow, . . . the Metropolitan of Kyiv should be ordained . . . as the one elected by those in that eparchy, namely the right reverend bishops, very reverend archimandrites, righteous abbots of the holy and venerable monasteries, righteous hieromonks, pious clergy, righteous monks, rulers[,] and others.

140. *Id.* at 10-11.

141. DOCUMENTS SPEAK, *supra* note 113, at 10-11; *see also* Vietochnikov, *supra* note 131, at 69 (“Moreover, it was said about the bishops, clergy[,] and political leaders of the Metropolitanate of Kyiv, that they will have the permission when required to choose the one they want (‘*ἐξαιν τούτους ἄδειαν ἡνίκα ἐμπίτη χρεία . . . ἐκλέγειν οὗτοι ὄντινα βούλωνται*’).”).

“Act” or “*tomos*,” signifies that the letter dealt with a matter of “permission.”¹⁴² The EP argues that the term “namely” modifies and signifies “subjects” and “subjection” to the “assign[ing]” to the MP the ordination of the Metropolitan of Kyiv.¹⁴³ Yet because it is the EP assigning the subjection in the first place, the EP argues, it must retain or be the origin point for ultimate authority over Kyiv.¹⁴⁴ But because this “subjection” is granted for purposes of *oikonomia*—or according to some copies of the letter, “by permission”—the temporary grant of ordination power did not signify a grant of ecclesiastical jurisdiction.¹⁴⁵ Thus, no amount of time-accrued practice could modify the limited 1686 grant.

The underlying source of authority, and correct interpretive framework, for the 1686 letter, as understood by the EP, is how it was understood by the participants in its creation without ascribing to the actors any intention to do “anything ‘beyond that’ which was requested.”¹⁴⁶ This specific-intent analysis is designed to negate the significance of the intervening history of the MP’s practical control over Kyiv and Ukraine and thus blunt the claims to historically legitimated jurisdiction. Because the MP failed to observe the conditions upon which the limited transfer of ordination authority was ceded by the EP, the Metropolitan of Kyiv’s practical dependence on the MP was “arbitrarily rendered an annexation and amalgamation of Ukraine to the Patriarchate of Moscow.”¹⁴⁷ Because the Ecumenical throne was in “deep turmoil” and thus “incapable ‘on account of the circumstances to raise its voice against such capricious actions,’”¹⁴⁸ its failure to correct the MP’s annexation is thus excused.

In concluding its judgment, after taking great effort to explain its historical and textual interpretations of the 1686 letter, the EP says that, regardless, the letter was never valid in the first place.¹⁴⁹ Here, it most explicitly assumes the role of an international legal body. In rationalizing its own failure to intervene when the MP failed to observe the conditions of limited cession of ordination authority, thus seeking to avoid a laches or forfeiture defense by the MP,¹⁵⁰ the

142. DOCUMENTS SPEAK, *supra* note 113, at 9-10. If the letter *were* intended to transfer canonical jurisdiction, it would have been entitled an Act or *tomos*, as was the case with the granting of autocephaly (for instance, to the Churches of Greece, Serbia, Romania, Bulgaria, Georgia, Poland, Albania, and the Czech Lands and Slovakia) or the granting of canonical jurisdiction to another autocephalous church in the cases of the “secession to the Church of Greece of the Ionian Islands, Thessaly, or the Diaspora in 1908 and its return to the Ecumenical Patriarchate in 1922.” *Id.* at 12-14 (“Had the Ecumenical Patriarchate desired to cede its canonical territory (namely Ukraine) to the Patriarchate of Moscow, it would have adopted a similar document to what was issued in all other instances.”).

143. *Id.* at 10.

144. *Id.*

145. *Id.* The EP also views as determinative that the 1686 letter required the Metropolitan of Kyiv “requires every Metropolitan of Kyiv to commemorate the Patriarch of Constantinople ‘among the first’ in the Divine Liturgy.” *Id.* at 10; see [METROPOLITAN] PANTELEIMON KARANIKOLAS, CONCORDANCE OF ORTHODOX CANONICAL REGULATIONS 298-99 (1979); see also DOCUMENTS SPEAK, *supra* note 113, at 31 (“Nevertheless, whenever this Metropolitan of Kyiv celebrates the sacred, holy[,] and bloodless sacrifice in this diocese, he should commemorate among the first the venerable name of the Ecumenical Patriarch as his source and authority.”); see also Vietochnikov, *supra* note 131, at 60-63.

146. DOCUMENTS SPEAK, *supra* note 113, at 19.

147. *Id.* at 15.

148. *Id.*

149. *Id.* at 20 (“Failure to adhere to the terms of any Act renders this Act invalid in its entirety.”).

150. For example, Canon 17 of the Fourth Ecumenical Council of Chalcedon stands for the

EP cites Roman secular law for the principle that “what never existed from the start is not affirmed with the passage of time,”¹⁵¹ which is nominally (or tangentially) articulated in the 1686 letter itself.¹⁵² Like international adjudicatory bodies, the EP invoked Roman law as a sort of *ius commune* to ground its opinion as normatively authoritative and thus able to defeat canonical statutes of limitations for claims similar to this one.¹⁵³ This violation of Roman law is cited *before* the MP’s alleged violation of canonical law—a sort of doctrine of unclean hands in ecclesiastical-jurisdictional claims.¹⁵⁴

Finally, the EP claims that the intervening centuries of Muscovite control over the Kyivan church should be considered irrelevant because the EP was “always aware” that the MP’s jurisdictional claims were illegitimate (even though this unbroken awareness is apparently evidenced only by the 1924 *tomos* regarding the Polish church).¹⁵⁵

3. *Russian Response and the Boundaries of Persuasive Authority*

The MP, in response, relied largely on the scholarship of Priest Mikhail Zheltov to counter the EP’s originalist-historical argument.¹⁵⁶ Zheltov’s counter to *The Documents Speak* does little more than place the center of the Russian world in Kyiv and emphasize the unity of the MP.¹⁵⁷ From the eleventh century, Zheltov’s article recounts the general boundaries of a “unified” Russian church and argues that the 1686 letter represents nothing more than the EP’s decision to decline the contestation of the MP’s rights to the Kyiv cathedral.¹⁵⁸ In short, Zheltov argues in a somewhat conclusory manner that the 1686 letter transferred “complete freedom,” or plenary authority, in the government of the Kyivan Metropolitan to the MP.¹⁵⁹

All things considered, the EP’s rationale and interpretation of the 1686

proposition that if nobody challenges a temporary canonical order for over twenty years, it is fixed forever. *The See of Kyiv Never Transferred to Moscow, Constantin Vetochnikov Says, supra* note 136. *But cf.* Vetochnikov, *supra* note 131, at 65-68 (arguing that such a claim would fail because the “period of prescription” under canonical law would apply only to parishes located in border rural areas, and not a Metropolis like Kyiv).

151. *DOCUMENTS SPEAK, supra* note 113, at 15; *see also id.* at 20 (“Failure to adhere to the terms of any Act renders this Act invalid in its entirety.”). Also interesting is the EP’s articulation and invocation of a great “axiom of jurisprudence” that the principle according to which the authority that issues an Act has absolute priority in the interpretation of that Act.” *Id.* at 22.

152. *See id.* at 31 (“Whosoever conceives anything contradictory to this, or in any other way seeks to disobey or demonstrate opposition to the command of the Lord, will in return receive appropriate penalties by the Lord as despising the patriarchs, who are the living and breathing images of God.”).

153. *Id.* at 15-16.

154. *Id.* at 19 (“The canons violated in this instance are many, including Canon 35 of the Holy Apostles, 13 and 22 of Antioch, 15 of Sardis, 2 of the Second Ecumenical Council, and so on.”).

155. *Id.* at 16, 20.

156. Metropolitan Hilarion: *If the Project for Ukrainian Autocephaly Is Carried Through, It Will Mean A Tragic and Possibly Irretrievable Schism of the Whole Orthodoxy*, MOSPAT [MP DEPARTMENT FOR EXTERNAL CHURCH RELATIONS], <https://mospat.ru/en/news/47098/>; Mikhail Zheltov, *Historical-Canonical Basis for the Unity of the Church*, ORTHODOX CHRISTIANITY, <https://orthochristian.com/116338.html>.

157. *See generally* Zheltov, *supra* note 156.

158. *Id.*

159. *Id.*

letter is more persuasive and seems to take the task of textual construction more seriously. In the arena of international law, where power is diffuse and influence stems from generating buy-in and influencing norms through discursive practices,¹⁶⁰ the EP's legal persuasiveness amounts to superior legal legitimacy. Lacking credible threats to exercise a state-like monopoly on violence, the EP assumed the form of legal argumentation, taking on the mantle of international lawmaker and adjudicatory body to establish its legitimacy.¹⁶¹

Orthodox Christianity's prominent position in the Russo-Ukrainian war should serve as just one case study for the broader assertion that transnational ecclesiastical bodies and churches should be taken seriously as influential actors in international law, generating international norms, justifying claims to cultural and political control, and working with state actors to generate coherent national and cultural identities. In short, it provides an example of a transnational religious body acting as an international lawmaking authority to materially shift international relations.

III. CONCLUSION

More than a year into the conflict, the Russo-Ukrainian war has already proven to be much more drawn-out than the brief military operation President Putin anticipated.¹⁶² As the conflict and Ukrainian resistance continues, it has become increasingly clear that cultural factors—including morale, perceptions of legitimacy, and the continued willingness of both nations' populations to remain engaged—will prove decisive. Against this backdrop, battles over ecclesiastical jurisdiction and claims to church authority will be more important than ever.

Regarding these religious battles, the EP's 2018–19 *tomos* granting autocephaly to the Orthodox Church of Ukraine stands out as a pivotal moment, realigning Orthodox Christianity in Ukraine away from Moscow and towards the West—a moment for which Ukrainian political actors fought dearly and which

160. Ingo Venzke, *Between Power and Persuasion: On International Institutions' Authority in Making Law*, 4 TRANSNAT'L LEGAL THEORY 354, 356 (2013).

[I]nternational institutions' authority in making international law emerges in discursive practices that set up international institutions' statements about the law as content-laden reference points that others can only escape at a cost. With the notion of semantic authority[,] I wish to refer to an actor's capacity to find recognition for interpretative claims and to establish its own statements about the law as new reference points for the legal discourse. Authority emerges with third actors who are in a position to shift and shape the contents of commitments, to coat them with new layers of meaning, and to sideline the original terms of any contract. I will thus revive the traditional conception of *auctoritas* as a "piece of advice that cannot easily be disregarded."

161. For discussions of the role of rhetoric, semantic authority, and persuasiveness in the course of norm-creation and international law, see Victor Peskin, *Assessing the Contemporary International Criminal Tribunals: Performance, Persuasion, and Politics*, 108 PROC. ASIL ANN. MEETING 122 (2014); Anthea Roberts, *Power and Persuasion in Investment Treaty Interpretation: The Dual Role of States*, 104 AM. J. INT'L L. 179 (2010); Andrea Bianchi, *International Adjudication, Rhetoric and Storytelling*, 9 J. INT'L DISPUTE SETTLEMENT 28 (2018); R.P. Anand, *The Role of Individual and Dissenting Opinions in International Adjudication*, 14 INT'L & COMP. L.Q. 788 (1965).

162. Jake Epstein & Charles R. Davis, *Putin Thought Russia's Military Could Capture Kyiv in 2 Days, But It Still Hasn't in 20*, BUS. INSIDER (Mar. 15, 2022).

the Russian leadership has recognized as a serious threat to Moscow's military efforts. The grant of autocephaly prefigures Ukraine's desired political reorientation towards Western centers of political and economic power, such as the EU and NATO.

To ignore these developments within the arena of institutional religious actors and their potential concrete effects on the war is to fail to grasp the breadth of the international legal landscape. Whether appreciated or not, institutional religious actors profoundly affect the international law arena and merit closer consideration among legal scholars.