



# Resisting the Silence: The Use of Tolerance and Equality Arguments by Gay and Lesbian Activist Groups in Russia<sup>1</sup>

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## Abstract

In the new, post-Soviet Russia, some people have been excluded from the possibility of possessing human rights based on different identity claims. Lesbians and gay men are among those who are excluded. Though in some states the mechanism of this is manifestly inscribed in the law, in Russia the mechanism is hidden in the field of silence: the field of discourse on homosexuality is full of lacunas. While the most productive speakers are certainly LGBT activists, the most passive ones are the state officials. These forces come into discursive play where rights are at stake. The purpose of this paper, based on original research on the emerging activism of gays and lesbians in Russia, is to uncover the regulative features of silence in the Russian discourse on homosexuality.

**Keywords:** homosexuality, Russia, discursive silence, human rights activism

## Résumé

Au sein de la nouvelle Russie post-soviétique, certaines personnes sont exclues de toutes protections inhérentes aux droits humains, selon des principes identitaires différents. Les lesbiennes et les gais sont parmi ceux exclus. Bien que, dans certains États, une telle exclusion soit inscrite dans la loi, en Russie, ce principe est caché sous un voile de silence : le champ du discours sur l'homosexualité est rempli de lacunes. Tandis que les activistes LGBT constituent les intervenants les plus productifs, les fonctionnaires de l'État sont les plus passifs. Ces forces entrent en jeu lorsque les droits fondamentaux sont en cause. S'appuyant sur des recherches primaires sur le militantisme émergent des gais et lesbiennes en Russie, le but de cet article est de déceler les caractéristiques régulatrices propres au silence dans le discours russe sur l'homosexualité.

**Mots clés :** homosexualité, la Russie, silence discursif, lutte pour les droits humains

## 1. Introduction

It has been twenty years since Russia started to move towards liberalization of the individual life of its citizens. Subjected to the Soviet state's ideological regime, the

<sup>1</sup> The author would like to thank Rosemary Hunter for her help with this work. Without her it would not have been possible.

citizens of the USSR were incapable of acting independently in public due to sanctions for various sorts of “violations” of the Soviet order. From the beginning of the 1990s, Russia claimed to be building a free and democratic society in which a human is granted “independence” through respect for her rights. But who may count upon human rights has turned out to be a debatable question. Some people have clearly been excluded from the category of possible rights possessors.

Homosexuality is one ground of exclusion from rights claims. It is not criminalized. Neither is it treated in psychiatric institutions. The mechanism of this exclusion is silence. Homosexuality is regarded as something that is definitely not appropriate to speak about in various settings. Hence, the field of discourse on homosexuality is poorly developed: a small number of social actors speak up. While the most productive speakers are certainly LGBT activists, the most passive and yet powerful ones are state officials. These forces come into discursive play where rights are at stake.

In this paper I want to juxtapose two different discursive flows that treat homosexuality in Russia: one is proposed by the state in the relevant laws and policies, and another is exposed in the advocacy strategies of Russian LGBT organizations. In this regard, it is necessary to take into account both sides of the story: the articulated one together with the one that is left unsaid. I argue that what is not said and what is silenced matters. Silence seems to be brought into action when articulated prohibitions can no longer be enforced. In the next section, I outline the history of the discourse on homosexuality in Russian law in order to identify the specific vocabulary of the state discourse. In section 3, I provide further information from an empirical study of the discourse generated by Russian LGBT organizations. In section 4, I consider the potential correlation of LGBT organizational discourse with the discourse of the powerful. I have tried to see exactly how the discursive lacunas constitute a homosexual subject in Russian laws and policies on homosexual issues.

The production of lacunas in the discourse may not always be a result of the officials’ intentions, but the silence of the powerful determines what others may say. This connection between lacunas and the speakable is the main concern of this article. The analysis in section 5 will show how discursive forces work to make up LGBT organizational discourse and its subjectivities, using the example of strategies employed by Russian LGBT NGOs to argue for same-sex marriage.

## 2. From Sodomy to Muzhelozhstvo

The foreigners who visited Russia in medieval times were shocked by the attitude of the Russians towards what they called “sodomy”: it seemed that the “sin” was regarded as something natural and essential by the locals.<sup>2</sup> At the time, Western Europe was cruelly persecuting male homosexual intercourse, sometimes burning its practitioners at the stake and drowning them in European rivers.

<sup>2</sup> I. Kon, *Liki i maski odnopoloy lyubvi: Lunnyi svet na zare*, 2-e izdanie (*Faces and masks of Same-Sex Love: Moonlight on the Dawn*, 2nd ed.) (Moscow: AST, 2006), 321–22.

The first Russian ruler who addressed the issue of sodomy was Ivan the Terrible. In his appeal to *The Stoglav Sobor* (Council of a Hundred Chapters, published in 1551), he argued:

[Tsar's] Question XXIX: . . . Why does God's wrath comes to this Earth together with various punishments of God's holy wrath? He will not be ultimately angry and He will punish us with His mercy as He is waiting for our confession and denial of evil, especially of whoredom, adultery and sodomy, arbitrary rule, vanity and envy. Otherwise what did He bring down the Flood for, saving only Noah? Not for whoredom's sake. What did He burn Sodom and Gomorra for, saving only pious Lot? Not for the boyish sin . . . So I command you to pray and to grieve to remedy sinful vices in order that God will send His mercy on His slaves; and more so, I command you to prohibit adultery and the evil sin of Sodom. So confirm this strictly.<sup>3</sup>

This prohibition was enacted, but it concerned only the clergy. Ivan the Terrible referred to the sin of Sodom (*sodomsy blud, sodomstvo*) to identify a variety of different sexual acts, which he lists all together: adultery, masturbation ("boyish sin"), and promiscuous sexual relationships. It is not clear whether the word *sodomsy* actually referred to sexual relations between same-sex persons. It is believed that the Orthodox religion did not focus specifically on the prohibition of homosexual intercourse, "rather Slavic clerics felt it was important for men and women to retain their designated gender roles."<sup>4</sup> Hence, the *sodomsy* sin included any deviation from the required licit (procreative) sex<sup>5</sup> and then was subdivided into major (anal penetration, bestiality)<sup>6</sup> and minor (female homosexuality,<sup>7</sup> intercrural homosexual intercourse<sup>8</sup>) offenses.

Subsequently, in 1715, Peter the Great introduced penalties for homosexual practices in the army. He clearly "modernized" the Russian legal language on sexuality by introducing a more precise formulation of homosexual intercourse and by shifting from the language of the Old Testament:

Article 166. If anyone defiles a young lad, or if a man lies with a man, they must be punished as mentioned in the previous article. If it was done by force, those men must be killed or sent to the galleys forever.<sup>9</sup>

The previous article punishes bestiality by flogging. The same chapter of the code, entitled "About the Sin of Sodom, Violence and Whoredom," contains articles on adultery, prostitution, rape, and other sexual crimes. Therefore, sodomy was still a collective term for various sexual acts, but sexual intercourse between men got its

<sup>3</sup> *Stoglav: Sobor byvshyi v Moskve pri velikom gosudare tsare i velikom knyaze Ivane Vasilyeviche (v leto 7059) (Council of a Hundred Chapters Held in Moscow in Front of Great Tsar and Great Duke Ivan Vasilievich (in the year 7059))* (London: Truebner and Co., Partners Row, 1860), 28–29. Cities are given in author's translation.

<sup>4</sup> E. Levin, *Sex and Society in the World of the Orthodox Slavs, 900–1700* (Ithaca, New York: Cornell University Press, 1995), 203.

<sup>5</sup> *Ibid.*, 172, 199.

<sup>6</sup> *Ibid.*, 202.

<sup>7</sup> *Ibid.*, 160.

<sup>8</sup> *Ibid.*, 202.

<sup>9</sup> *Artikul voinsky s kratkim tolkovaniem i s protsessami, napechatasya povelieniem Eya Imperatorskago Velichestva (Military Articles with Short Commentaries and Cases, Published by the Order of Her Imperial Majesty)* (Saint Petersburg: Imperial Academy of Sciences, 1777), 54.

own word: *muzhelozhstvovat* (to engage in man-lying-with-man). This discursive novelty, introduced by Peter the Great, marks a new categorization of male homosexual actions in law. Engelstein argues that “the chapter on sex in Peter’s code contains no religious language”<sup>10</sup> and therefore reflects secularization as an effect of the tsar’s modernization enterprise.<sup>11</sup> However, I argue that the language of this chapter—at least in regard to the treatment of homosexual intercourse—reflects Peter’s efforts towards modernization but, at the same time, effects a certain setback from this very modernization: the word *muzhelozhstvo* cannot be called secular in a full sense. It is taken from the first translation to Russian of the Epistle of Peter (the Apostle), which was initiated by Peter the Tsar. When Peter the Apostle speaks about homosexuality in the Russian version of the Bible, he uses words like *muzhelozhstvo* (4:3) and *muzhelozhnik* (6:9,10; 1:8-11). Probably those words were already frequently used in the interpretations of sodomy by the priests who used the incomprehensible Old Church Slavonic translation of the Bible. Thus, by modernizing both legal and religious vocabularies at once, Peter created confusion, especially in those cases when the law and religion competed in regulating the same phenomenon.

During the reign of Nicholas I, when the Criminal Code of Russia, devised on the German model, was enacted in 1832, homosexuality was finally criminalized:

A person, caught performing the unnatural vice of *muzhelozhstvo*, shall be deprived of all his status rights and sent to Siberia for life, and if, in accordance with the law, corporal punishment can be applied to him, then it shall be applied by executioners to the extent indicated in article 22 of this Code, second degree of punishments of this kind. Moreover, if he is a Christian, then he shall perform the penance which his confessor specifies.<sup>12</sup>

This article, number 1293 in the 1845 edition, was later modified and remained as number 995 until 1917. There is no evidence that paragraph 995 of the Criminal Code was extensively enforced. But it undoubtedly provoked discussion<sup>13</sup> and contributed to certain changes in the legal discourse on homosexuality. This discussion saw a clash between three competing currents in the legal and political argumentation of nineteenth-century Russia: the emerging liberal discourse was attacked by conservative argumentation<sup>14</sup> and arguments critical to liberal ideology.<sup>15</sup> The liberal point of view argued for the protection of privacy and individual autonomy and advocated the decriminalization of homosexuality on these bases, but conservatives confronted this position with the contention that *muzhelozhstvo* constituted a public offense and contradicted commonly accepted religious doctrine.<sup>16</sup>

<sup>10</sup> L. Engelstein, *The Keys to Happiness: Sex and the Search for Modernity in Fin-de-Siècle Russia* (Ithaca, New York: Cornell University Press, 1992), 59.

<sup>11</sup> *Ibid.*, 58.

<sup>12</sup> *Ulozhenie o nakazaniyakh ugovolnykh i ispravitelnykh (Crimes and Executions Code)* (Saint Petersburg: Second Dpt. of His Majesty Chancellors Press, 1845), 524–25. My emphasis.

<sup>13</sup> V Nabokov, “Plotskiya prestupleniya po proektu ugovolnago ulozheniya” (“Crimes of the Flesh in the Light of Criminal Code”), *Vestnik prava (Law Review)* 32, nos. 9–10 (1902): 129.

<sup>14</sup> Engelstein, *The Keys to Happiness*: 63.

<sup>15</sup> *Ibid.*, 6.

<sup>16</sup> *Ibid.*, 66.

By the time of the Soviet revolution of 1917, Russian law had failed to introduce respect for privacy and personal autonomy into its texts. The Criminal Code of the Russian Empire still provided punishment for *muzhelozhstvo*, but the revolutionaries decriminalized it as the new ideology prescribed the liberation of the body from bourgeois restrictions.<sup>17</sup> Up to a certain point, Russia made significant progress in achieving individual freedom from any oppression. Male homosexuality was decriminalized and homosexual discourse flourished in poetry (especially lesbian poetry) and literature.

However, with the growth of authoritarian tendencies, the state's intervention into people's private lives also grew tremendously. In 1934, clause 154a was included in the RSFSR Criminal Code, which provided imprisonment for a period of up to five years as punishment for voluntary "sexual intercourse of a man with a man (*muzhelozhstvo*)."<sup>18</sup> The intentions of its enactment are clearly stated in a report by the chief of police to Stalin, in which he sought a means of combating male prostitution and public manifestations of homosexual intercourse.<sup>19</sup> It also promoted the struggle against "alien class elements" and "social anomalies," setting up the image of the good Soviet citizen as heterosexual.<sup>20</sup> Stalinist Russia turned to the well-known tsarist practices of administrative rule through repressive law and violent police surveillance, which intended to control a person's every activity in private and public, while at the same time erasing vague boundaries between the two. This situation entailed a revival of the tsarist legal order with its religious *muzhelozhstvo*, despite the fact that a new word had already been introduced in medical discourse and Maxim Gorky used it in his appeal to condemn *gomoseksualizm*.<sup>21</sup> What is seen in this discursive "mess" is that an attempt at modernization of the Soviet kind had been combined again with retroactive reference to the putatively rejected religious discourse. The effect of this reference ensured the continuity of tsarist legality, at least in its relation to male homosexual intercourse.

This legal norm and the ones related to the same discursive realm (concerning family, gender equality, and the women's movement) dictated a certain social order characterized by references to "tradition" and a religiously constituted heterosexual vision of intimate relations.<sup>22</sup> The Soviet legislation, together with anti-religion

<sup>17</sup> E. D. Emelyanova, "Gender v sovetskoy istoriografii" ("Gender in Soviet History"), in *Pol i gender v naukakh o cheloveke i obshchestve (Sex and Gender in Social Sciences)*, ed. V. Uspenskaya (Tver: Feminist-Press, 2005), 177–186; A. Mitrofanova, "Sovremennye gendernye politiki v perspektive proletarskoy seksualnoy revolyutsii 1920kh godov" ("Contemporary Gender Politics from Proletariat Sexual Revolution of 1920s Perspective"), in *Vozmozhno li 'kvir' po-russki? LGBTK issledovaniya (Is 'Queer' Possible in Russian? LGBTQ Studies)*, ed. V. Sozayev (Saint Petersburg: Vykhod, 2010), 98–106

<sup>18</sup> The Criminal Code of Russian Socialist Federative Soviet Republic, 1926. Clause 154a was enacted in 1934.

<sup>19</sup> D. Healey, *Gomoseksualnoye vlecheniye v revolyutsionnoy Rossii. Regulirovaniye seksualno-gendernogo dissidentstva (Homosexual Desire in Revolutionary Russia: The Regulation of Sexual and Gender Dissent)* (Moscow: Ladomir, 2008), 227.

<sup>20</sup> *Ibid.*, 229–32.

<sup>21</sup> M. Gorky, "Proletarskiy gumanizm" ("Proletarian Humanism"), *Pravda (The Truth)* 140, no. 6026 (1934), 3.

<sup>22</sup> See, for example, K. Geiger, *The Family in Soviet Russia* (Cambridge: Harvard University Press, 1968); R. Stites, *The Women's Liberation Movement in Russia: Feminism, Nihilism and Bolshevism, 1860–1930* (Princeton: Princeton University Press, 1978); A. Rotkirch, *The Man Question. Loves and Lives in Late 20th Century Russia* (Helsinki: University of Helsinki, 2000).

policies and propaganda, managed to secularize *muzhelozhstvo*, but only by taking this term from the religious vocabulary and inserting it into its own normative discourse, where it retained its religious connotations. By doing this, the Soviet autocracy tried to replace the religious god with the Party.

Another issue that proved the continuity of the same discursive features concerned the denial of privacy and personal autonomy. Though anti-privacy arguments relied on communist collectivist ideals, substantively they showed the same disregard for the human person that served as the basis for anti-homosexual law and medical treatment: the “official persecution of lesbians and gay men in Russia—whether through legal or extralegal means—took root in the systematic obliteration of privacy and individuality undertaken by the Soviets.”<sup>23</sup> The later version of the Soviet Criminal Code (1960) did not modify the article’s contents, only its number (it was changed to 121.1). The status of homosexuality as a criminal offense secured the conditions of sexual citizenship and marked the moral boundaries of the nation. As a criminal offense and a matter of political ideology (so long as the Communist Party took the role of the moral trendsetter), homosexuality occupied the realm of silence: the unspeakable margin. This moral condemnation did not allow other discourses to capture homosexual desire and develop the idea in medical, literary, or cultural domains. Certainly, this prohibition was not totalitarian; apart from the Criminal Code itself, the Big Soviet Encyclopedia contained an article on *gomoseksualizm* and claimed it to be a pathology;<sup>24</sup> in the 1960s and 1970s, there was a discussion on decriminalization of *muzhelozhstvo* in legal circles;<sup>25</sup> in the 1980s, some psychological research were published.<sup>26</sup> But the final decision was still that of the state, which monopolized the right to establish knowledge. This monopoly was questioned at the end of the 1980s when Gorbachev proclaimed *perestroika* and sanctioned the era of large-scale political mobilization. At this time the first LGBT NGO, Krilija, began its activity,<sup>27</sup> and the Libertarian Party, the first political party that recognized the rights of “sexual minorities,” was initiated.<sup>28</sup>

<sup>23</sup> M. Gessen, *The Rights of Lesbians and Gay Men in the Russian Federation: An International Gay and Lesbian Human Rights Commission Report by Masha Gessen* (San Francisco: The International Gay and Lesbian Human Rights Commission, 1994), 6.

<sup>24</sup> *Bolshaya sovestkaya entsiklopedia*, vol. 7, 3rd ed. (Moscow: Soviet Encyclopedia, 1972), 56. It is interesting that the authors of the Encyclopedia clearly distinguished homosexuality and *muzhelozhstvo*. The latter was understood as criminalized perversion “usually related to homosexuality, but rarely situational as well” (*ibid.*, 83).

<sup>25</sup> V. Chalidze, *Ugolovnaya Rossiya (The Criminal Russia)* (New York: Khronika, 1977), 228. In a short passage the author mentions that Leningrad lawyers proposed to decriminalize homosexual intercourse. In his own description, he uses a variety of terms related to male homosexuality as synonyms: *muzhelozhstvo*, *gomoseksualizm* (homosexuality), *muzgchiniy-gomoseksualisty* (homosexual men), and *pederasty*.

<sup>26</sup> I. Kon, *Vvedenie v seksologiiu (Introduction to Sexology)* (Moscow: Meditsina, 1989); A. Svyadoshch, *Zhenskaya seksopatologia, 3 izdanie (Female Sexual Pathology, 3rd ed.)* (Moscow: Meditsina, 1988).

<sup>27</sup> As indicated on the NGO’s official web page, <http://krilija.sp.ru/en/index.html> [Accessed on 22 October 2012].

<sup>28</sup> S. Ayvazova, “Zhenskoye dvizhenie v Rossii: traditsii i sovremennost” (“Women’s Movement in Russia: Traditions and Modernity”), *Obshchestvennye nauki i sovremennost (Social Sciences and Modernity)* 2 (1995): 130; see also “Libertariantsy: Prezident mozhet byt gomoseksualistom” (“The Libertarians: A President Could Be Homosexual”), *Kommersant vlast* 18, no. 68 (1991). <http://www.kommersant.ru/doc/265292> [Accessed on 23 October 2012].

At the end of the Soviet epoch and the beginning of the new Russian statehood, the aim of these organizations was to inscribe homosexuality in the social domain. The pragmatic end was to achieve decriminalization of male homosexual intercourse, which happened in 1993. In the Act that decriminalized *muzhelozhstvo*, there was no specific mention of the reason for this modification. The state simply followed its silent rhetoric: article 121 was modified to exclude item 121.1, so that item 121.2 (homosexual rape) remained the only text of the article.<sup>29</sup> This modification was issued together with a list of other changes to the Soviet Criminal Code, which would remain in force until the enactment of a new criminal code much later. It was contested by the existing social groups in their attempt to use language other than vulgar, legal, or medical terms when describing homosexuality. During the 1990s, public vocabulary that named homosexual people was enriched with such terms as “sexual minority,” *goluboy*, and “gay.” These terms reflected the expansion of homosexual vocabulary into cultural and social domains. At the same time, the lack of legal condemnation was replaced by a flourishing homophobic medical discourse<sup>30</sup> and literature,<sup>31</sup> which contributed to the continuity of the heteronormative perception of homosexuality that was still characterized by references to traditional gender roles, protection of public order, and heterosexual relationships as the only possible sexual relationships confirmed by nature and common sense.

To summarize this short archaeological survey: homosexuality appeared first as one sin among many other sexual activities demonized by the church under the rubric of “sodomy.” In the eighteenth century, during Peter the Great’s attempts to modernize Russia, the term was replaced with *muzhelozhstvo* and inserted at once into the Military Statutes and the new translation of the Bible. In many senses, this situation secured the continuity of the historical travels of the term as it went through the Criminal Codes of the Russian Empire, charged with religious formulations, to the Criminal Codes of the USSR, where moral issues earlier considered to be a matter of spiritual concern received the special attention of the administrative power of the Soviet state. As the monopoly on truth belonged to the Communist Party, not science, male homosexuality was silenced except in legal discourses. This silence was sporadically broken by lawyers, who fought for rationalization of the law, and by doctors, who fought for the right to establish the truth in medical discourse. When homosexuality was decriminalized, it continued to be pathologized, and this pathologization promoted a general homophobic atmosphere. At the same time, new actors emerged in the field: fighters for rights and public performers. They managed to bring in new (cultural and social) terms for speaking about homosexuality aloud. Their voices were heard, but this did not necessarily lead to social recognition.

<sup>29</sup> Federal Law Act N. 4901-1 “About Modifications and Additions to the Criminal Code of the RSFSR, the Code of Criminal Procedure of RSFSR, and the Code of Correction and Correctional Labor of RSFSR” (1993).

<sup>30</sup> D. Healey, “‘Untraditional Sex’ and the ‘Simple Russian’: Nostalgia for Soviet Innocence in the Polemics of Dilia Enikeeva,” in *What Is Soviet Now? Identities, Legacies, Memories*, eds. T. Lahusen and P. H. Solomon Jr. (Berlin: Lit Verlag, 2008).

<sup>31</sup> E. Baraban, “Obyknovennaya gomofobia” (“Homophobia Simply”), *Neprikosnovenniy zapaz (Emergency Store)* 5, no. 19 (2001/2002): 85

### 3. Hear the Speakers

I now turn to the contributions to the discourse made by the most active elements within it: Russian LGBT activists. Taking into account the context of the activists' work, I have sought to find out, "how is it that one particular statement appeared rather than another?"<sup>32</sup>

LGBT activism in Russia emerged in an era of changes, when the Soviet state was announced to be in need of transformation. Certainly, one of the most important tasks for activism at that time was the fight for decriminalization of consensual male homosexual intercourse. Although the correlation between actual decriminalization and the influence of activism on this reform is not clear, some organizations were actively engaged in this debate.<sup>33</sup> When homosexuality was decriminalized in Russia in 1993, it also marked the end of gay activism to some extent. In the second half of the 1990s, the organizations that seemed to achieve their final aim so quickly were reconstituted as gay tourist agencies, glamour reviews, and, lately, dating websites; or, they were simply disbanded. Activists' biographies reflect this situation quite obviously: starting from rights struggle, some then turned to "gay-business" and opened nightclubs<sup>34</sup> or tabloids.<sup>35</sup> Certainly, there were a few exceptions: an attempt to open an LGBT organization called Triangle was undertaken in 1993.<sup>36</sup> It was supposed to unite activists from more than ten regions of Russia, but due to officials' refusal to register it, financial problems, and some internal quarrels, it failed to function with any visible effect.<sup>37</sup> The first Russian LGBT activists turned to journalism as well, and some of them cheered the new wave that emerged later.<sup>38</sup> The creation of the Lesbian and Gay Archive is also worth mentioning; it contains the personal diaries of Russian homosexual people, as well as academic literature and newspaper articles on the topic.<sup>39</sup>

The work of these various agents was important in regard to the "invention" of homosexuality in Russia. What is "gay" (*goluboy*, "sexual minority") was shaped in the 1990s thanks to these organizations and initiatives. However, at a certain moment, the time came to "reinvent" gayness once more. Since 2005, one may have noticed a second wave of LGBT community institutionalization, as gay and lesbian organizations have been founded in Moscow, Saint Petersburg, Arkhangelsk,

<sup>32</sup> M. Foucault, *Archaeology of Knowledge* (London: Routledge, 1972), 30.

<sup>33</sup> See "Life under the Act" (Kriliya). <http://www.kriliya.sp.ru/publications2.html> [Accessed on 05 May 2010].

<sup>34</sup> V. Kirsanov, 69. *Russkie gei, lesbiyanki, biseksualy i transeksualy. Kratkie zhizneopisaniya vydayushchikhsya rosiyan i sovremennikov* (69. *Russian Gay Men, Lesbians, Bisexuals, and Transsexuals: Short Biographies of the Extraordinary Russians and the Contemporaries*) (Tver: Ganimed, 2005), 476–86.

<sup>35</sup> *Ibid.*, 538–48.

<sup>36</sup> In another source, in 1995: *Umer Vlad Ortanov – odin iz pervykh gey-aktivistov Rossii i SSSR (Vlad Ortanov Died: He Was One of the First Gay Activists in Russia and the USSR)* (2011). <http://www.gay.ru/news/rainbow/2011/11/26-22263.htm> [Accessed on 23 October 2012].

<sup>37</sup> K. Kirichenko, *LGBT aktivizm: sokrashchaya put' k peremenam (LGBT Activism: Making the Way to Changes Shorter)* (Omsk: Pulsar, 2010), 7.

<sup>38</sup> M. Gessen, *Zachem nuzhny gey-paragy (What Gay Pride Parades Are For)* (2011). <http://www.snob.ru/selected/entry/36273> [Accessed on 23 October 2012].

<sup>39</sup> *Moskovskiy arkhiv lesbiyanok i geev perevedut v tsyfrovoy format (Moscow Gay and Lesbian Archive is Being Digitalized)* (2012). <http://www.lesbi.ru/news/rainbow/2012/01/20-22652.htm> [Accessed on 20 October 2012].



Tyumen, Perm, and other cities and towns in Russia. Their aims are located in the discourse of rights—they claim to struggle for and to protect LGBT rights, from the lack of which we supposedly suffer.

An orientation towards human rights talk is a feature that defines the second wave of LGBT activism in the new Russia. I identified fifteen LGBT organizations that declare the struggle for rights as the main concern of their work with the community and in relation to authority. The other organizations—such as HIV centers, dating and tourist agencies, and cultural organizations—which also target gay men and lesbians, were not within the scope of the research, because what they provide is a service to resolve certain personal problems without entering into the political realm. Discourse analysis undertaken in this research has aimed to uncover the subjectivities constructed within a rights discourse that organizes the “conduct of conduct” in the social field.

The fifteen organizations are all represented on the Internet.<sup>40</sup> At the beginning of this research in 2009, ten of those organizations had their own websites. As of the end of 2012, six of them have still maintained these websites,<sup>41</sup> two of them have chosen LiveJournal as their main online site,<sup>42</sup> one has been disbanded,<sup>43</sup> and one has been merged into a bigger organization.<sup>44</sup> Another five organizations have maintained their web pages in the Russian social network *vKontakte*<sup>45</sup> (a local analogue of *Facebook*) since the very beginning. The web materials provide a variety of information on the organizations including strategies, events, accounts, views, and places. I examined all of the material on these websites (including charters, reports, news items, and pictures) in the search for statements that concern rights and claims for rights.

These fifteen NGOs organize a variety of advocacy activities and use different strategies. The biggest NGO is LGBT-Network. It is based in St. Petersburg and coordinates the activities of other organizations all over Russia from its headquarters there. The Network supports registered and unregistered organizations, as well as individuals who undertake LGBT-rights campaigns in their home regions.

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<sup>40</sup> All the materials from the web are stored offline and are available from the researcher on request.

<sup>41</sup> *GayRussia.Ru*: <http://www.gayrussia.eu> (in the beginning of the research, the website name was [gayrussia.ru](http://www.gayrussia.ru)); *Vykhod* (Coming-Out): <http://www.comingoutspb.ru>; *Krilija*: <http://krilija.sp.ru>; LGBT-Network: <http://www.lgbtnet.ru>; Equality: <http://www.spb-pride.ru>; *Rakurs*: <http://rakurs.ucoz.com/>.

<sup>42</sup> *Rainbow Syndrome*: <http://rainbowsyndrome.livejournal.com> (the initial website was: <http://www.rainbow-syndrome.org/>; informational materials were transmitted to the livejournal page); *LesbyPartyЯ*: <http://inozemceva.livejournal.com/> (the initial website was: <http://www.lesbiparty.org.ru>; informational materials were always copied to the livejournal page).

<sup>43</sup> The website <http://lgbtrights.ru> that belonged to *LGBT Rights* (Interregional Movement for Rights of Gays, Lesbians, Bisexuals, Transsexuals in Russia) was closed in 2012; its creator argues he continues the work: <http://www.news.gayby.net/publ/13-1-0-230#.UJeIzcV2weo> [Accessed on 5 November 2012].

<sup>44</sup> *Marriage Equality Russia* maintained <http://www.marriageequality.ru>. On May 30, 2012 the NGO was refused registration by Gagarinsky City Court: <http://gagarinskij-rajonnyj-sud.ru/imenem-rossijskoj-federacii-1t-adres-gt-dd-mm-22/> [Accessed on 5 November 2012]. The activists closed the organization's website and transmitted some information from it to the *GayRussia* website at <http://www.gayrussia.eu>.

<sup>45</sup> *Gender-L*: <http://vk.com/genderl>; *Krug-Karelia*: <http://vk.com/club5167974>; *Maximum*: [http://vk.com/maximum\\_murmansk](http://vk.com/maximum_murmansk); *Rainbow House*: <http://vk.com/radugadom>; *Ural-Positive*: <http://vk.com/club8083941>.

The NGO organizes annual conferences where activists meet each other, share their experience, and elaborate common strategies. Some of the organizations studied form part of the Network; they include Vykход (Coming-Out), Rakurs, Gender-L, Krug-Karelia, Krilija, Rakurs, and Rainbow Syndrome. In addition, the Network supported the organizers of the LGBT film festival Bok-o-Bok (Side-by-Side) in St. Petersburg, which is now a registered organization that meets the cultural demands of the local community for LGBT cinema. The Network publishes advocacy materials, leaflets, and monitoring reports. It also maintains a telephone hotline for psychological and legal help for the LGBT community.

Another very active organization is Vykход (Coming-Out). It is a St. Petersburg organization that conducts advocacy campaigns within the region. Its main activities include maintenance of a community center, a telephone hotline, and officially sanctioned public actions. Some activities of this NGO might be easily confused with those of the LGBT-Network because the people who work there and the office they occupy are the same. This is also true for Gender-L, which is a “public organization for informational, legal and psychological services,”<sup>46</sup> situated in St. Petersburg and supervised by Vykход and LGBT-Network employees.

Krilija (The Wings) is the oldest LGBT organization in Russia. It was created in 1991 in St. Petersburg as a grassroots initiative to struggle for LGBT rights and the decriminalization of homosexuality.<sup>47</sup> According to the website, the NGO has not been active since 2007, but its representatives do visit local and international conferences on advocacy for gay and lesbian rights in Russia and support the activities of LGBT-Network and Vykход. Another St. Petersburg organization is LesbyPartyЯ (Lesbian Party), but it is not clear if it is still active in advocacy or politics.

There are organizations in other regions of Russia: Krug-Karelia (Republic of Karelia), Rakurs (Arkhangelsk), Rainbow Syndrome (Rostov-Na-Donu), Maximum (Murmansk), Ural-Positive (Perm and Yekaterinburg), and Rainbow House (Tyumen). In 2007, Rakurs became the first registered LGBT organization in Russia (Krilija was registered as an “advocacy center” in 2000).<sup>48</sup> It is almost as active in Arkhangelsk as Vykход is in St. Petersburg in its attempts to get approval from the government for LGBT public events, organization of a community center, and monitoring of discrimination. The organizations from other regions also follow the general line promoted by LGBT-Network, but with less success. The exception is Ural-Positive, whose main focus is advocating for HIV treatment and support for people with HIV-positive status. Overall, these organizations are trying to provide ground for solidarity within the LGBT community, in their regions and all over Russia, by maintaining specific informational and spatial arrangements.

In Moscow, the most visible activities are performed by GayRussia, which has organized LGBT Pride Parades since 2006. These actions have never been

<sup>46</sup> Aims are listed on the NGO’s social network page: <http://vk.com/genderl> [Accessed on 05 November 2012].

<sup>47</sup> “Our History” (undated), <http://krilija.sp.ru/en/index.html> [Accessed on 05 November 2012].

<sup>48</sup> Data is taken from the Registration office online base, <http://unro.minjust.ru/NKO.aspx> [Accessed on 05 November 2012].

sanctioned by city authorities, and the activists have always been detained for disturbance of public order when they have tried to go out on the streets without permission. The NGO sued the city government and later Russia in the European Court of Human Rights for violation of freedom of expression. They won the case. The activists of GayRussia travel to those Russian cities where they feel discrimination towards lesbians and gay men takes place. There, they organize public actions to confront inequality, and if they are stopped by the police, they go to court. In St. Petersburg, this strategy was adopted by Equality. The two organizations also support LGBT Pride Parades in other post-socialist states, including Ukraine, Belarus, and Latvia. The main focus of the organizations is creating precedents in court. This strategic logic was also expressed in the program of the Marriage Equality movement, initiated by GayRussia activists. These organizations do not create community centers or special services; their unique concern is public activism and legal challenges in cases where their activities are prohibited.

In my search through the information on these organizations' websites and pages, I was interested in the argumentation made for (or against) rights. I found that four NGOs prioritize the rhetoric of equality in claiming rights (GayRussia, Equality, Marriage Equality, and Ural-Positive). Eight NGOs prioritize a rhetoric of tolerance (LGBT Rights, Vykhod (Coming Out), Gender-L, Krug-Karelia, Krilija, LGBT-Network, Rakurs, and Rainbow Syndrome). Three organizations state that protection of rights is their aim, however, their texts do not go further than this statement (LesbyPartyЯ, Maximum, and Rainbow House). This analysis confirmed my initial hypothesis that rights arguments would possibly divide into two groups: tolerance arguments and claims to equality.

The purpose of the second stage of the analysis was to collect comments from the heads of these organizations on the topics of human rights, state authorities, and same-sex marriage, in order to clarify some points and to double-check my initial findings. It appeared that there was a strong correlation between arguments for equality of rights, a resistant attitude towards the authorities, and claims for same-sex marriage on the one hand; and, on the other hand, a correlation between tolerance arguments, a favorable attitude towards the authorities, and claims for civil partnerships (or a dismissal of this topic from the discourse altogether). The comments were gathered in an e-mail survey. Fourteen of the fifteen organizations responded to the survey.

The discourse analysis was then continued to find out how discourse organizes its subjectivities. In this work, I used Wendy Brown's update of the Foucaultian vision of governmentality, as she claims that the production of subjects in discourse by a variety of powers is related to their legitimation by the political power of the state.<sup>49</sup> This point was important in one crucial regard. It is claimed that in 1917 in Russia, an alliance was formed between tsarist administrative rule and disciplinary mechanisms.<sup>50</sup> I have shown how this worked in relation to the legal regulation of

<sup>49</sup> W. Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton: Princeton University Press, 2006), 83.

<sup>50</sup> L. Engelstein, "'Kombinirovannaya' nerazvitost'" ("The 'Combined' Underdevelopment"), *Novoe literaturnoe obozrenie (New Literary Review)* 49, no. 3 (2001): 40–41.

homosexual desire over time in the previous section. Therefore, addressing the state's legitimizing forces is crucial in the discourse analysis. Governmentality may take different forms. In this work, at least two modalities of governmentality are investigated: the one that follows from silence and the one that goes together with the articulated part of the discourse. Silence organizes marginalized subjects, while the enunciative field shapes their marginalization. Both modalities are reliant on the state insofar as the first is driven by it and the second is legitimized by it, as Brown suggests. The analysis of the "unsaid" is troubled by its very essence: what is not said is difficult to capture for interpretation. In order to do so, however, it is possible to follow a certain line of analytical actions. I have distinguished hypothetically three different elements of the unarticulated domain: "sub-discourse," "lack," and "the unspeakable."

## 4. The Discourse of Silence

### 4.1 *Sub-Discursive Homophobia*

Some meanings evidently lie between the lines, constituting the sub-discourse under the articulated one. They may be identified relatively easily by tracing the history of pronounced ideas and closely studying both the text and its context. The sub-discourse is meant to be recognized; hence, it constitutes a part of the normative order, shaping things that are supposed to be left unsaid. I shall provide illustrations of this sub-discourse taken from two important legal norms concerning homosexuality that are currently operating in Russia.

It is necessary to note that in 1993, when homosexuality was decriminalized, a discursive shift did not happen. Homosexuality was erased from the law, but its aura of illegality, of being prohibited and censored, was not dismantled. Decriminalization was a simple matter of the new Russian government following the requirements of its European partners.<sup>51</sup> To the extent that Russia desired integration with the international "civilized" community, it had to eliminate discriminatory legal norms such as clause 121.1, but the normative order that continued to govern Russian legal discourse could not be eliminated so easily. In 1997, when the new Criminal Code was enacted, homosexuality reappeared there again.

Clause 132 of the new Criminal Code does not punish consensual homosexual relations, but it is specified in the clause that *muzhelozhstvo* and *lesbianstvo* (lesbianism) performed with the application of violence are punishable (clause 132.1). So, homosexuality is simultaneously decriminalized and subjected to the Criminal Code. Homosexual assault is separated from heterosexual assault, because these two sexualities cannot be imagined as equal by the legislators, to whom homosexuality is perverse. Moreover, female and male homosexuality are henceforth treated equally in Russian legal discourse.

The same situation occurred in the medical discourse on homosexuality in Russia. When the authorities adopted the classification of illnesses accepted by the World Health Organization (ICD-10) in 1999, they hastened at the same time to issue a clinical manual, "Models of Diagnostics and Treatment of Mental and

<sup>51</sup> Gessen, *The Rights of Lesbians and Gay Men in the Russian Federation*, 24–25.

Behavioral Illnesses,” approved by the Order of the Minister of Health of the Russian Federation Number 311. Section F65 of the manual (“Disorders of Sexual Preference”) describes the sexual norm in Russia:

The criteria of sexual normality are: paired relationship, heterosexuality, puberty of partners, voluntariness of the relationship, tendency to consensus, absence of physical or moral damage to the health of partners and other persons. A disorder of sexual preference means any deviation from the norm of sexual behavior, irrespective of its displays and intensity, its degree or etiological factors. This notion includes disorder as deviation from social norms and from medical norms, as well.<sup>52</sup>

In the description of the sexual norm, which is stated to be social and medical all at once, the authors of the manual consciously described adult heterosexual coupledness as the only model they imagine to be healthy. It is not said that homosexuality falls outside the norm, but it clearly does not fit the criteria and, therefore, falls under the notion of “disorder.” Moreover, the criteria do not relate solely to medical discourse but expand to include the social realm as well. It is important to notice that they are not derived from medical research on sexual behavior or from medical observations.

In order to work out the regulation of sexual normality, other discursive powers were invoked, ones that refer to common sense, “tradition,” and protection of the public sphere. Consider the above cited phrases: voluntariness, puberty (adult partners)—common sense in the organization of imagined heterosexual couples’ relationships; consensus—the traditional understanding of gender roles, prescribed by nature or gods (a woman cannot argue with a man); sexual relations not damaging to other people—protection of public morality and order.

At the same time, the text does not contain direct references to homosexuality, because it is officially considered normal. But its normality remains unintelligible for the authors of these legal and medical texts.

#### **4.2 A Lack of Family**

What is articulated also references the unsaid.<sup>53</sup> This sort of silence may be found in Russian family law. Recognition of same-sex families has not yet been achieved in Russia. However, Russian family law does consider gays and lesbians to be its subjects. Homosexuals are subjected to the law in order to constitute the normative heterosexual monogamous family based on references to “traditional” dogmas.

The Family Code of the Russian Federation (1995) does not straightforwardly exclude gays and lesbians from those who enjoy rights of matrimony; there is not even a word about homosexuality in the text of the law. Nonetheless, the Code specifies that “in order to register a marriage mutual and voluntary consent of *a man and a woman*, who are entering into a marriage, is *required*” (clause 12.1, my emphasis). Homosexual couples are excluded from marriage by the regulative function of “a lack,” that of being composed not of a man and a woman.

<sup>52</sup> “Disorders of Sexual Preference,” *Order of the Minister of Health of the Russian Federation* No. 311, Section F65 (1999).

<sup>53</sup> Foucault, *Archaeology of Knowledge*, 124.

An attempt to challenge the heteronormativity of family law was brought before the Constitutional Court of the Russian Federation in 2006. The court considered a claim by two gay men to be registered as a married couple (N 496-O, 2006). The claimant in the case argued that clause 12.1 of the Family Code was unconstitutional. But the court stated that a homosexual man has the same right to marry as a heterosexual man, because the homosexual man still has the right to marry a woman. The court stated that

the Constitution of the Russian Federation and international legal norms act on the premise that one of the purposes of family is the procreation and upbringing of children.

Considering this and the national traditions of family that regard it as a biological union of a man and a woman, the Family Code of the Russian Federation states that the regulation of family relations is to be fulfilled—particularly—in accordance with the principles of the voluntariness of a marriage union of a man and a woman, the importance of bringing up children in a family, and care for their welfare and development.<sup>54</sup>

In the legislators' imagination, an ideal family is a social unit in which "relations are built upon mutual love and respect" (clause 1.1). The regulation of family relationships is realized according to "the principles of voluntary conjugality between a man and a woman, and equality of the rights of spouses in the family" (clause 1.3). It is the family that is supposed to establish the traditional gender order and perpetuate reproduction, in comparison with which any other sexuality is a lack surrounded by silence.

### 4.3 *The Unspeakable Realm*

The third element of silence, I suggest, is the unspeakable: the ideas that are relevant to a statement but which are known about only because they might be said in a different social or historical reality. Unspeakable ideas are ignored in discourse, doomed to be kept in silence. They are not meant to be deliberately silenced or censored. The silencing of unspeakable ideas is a "social pact" between the speakers governed by the discourse itself.

The unspeakable is discernible in the interpretations of Russian law that could be applied to protect the rights and liberties of lesbians and gay men but are never so applied. This silencing in law produces a legal reality in which there is no homosexual subjectivity despite the fact that a different reality is possible. For example, in some countries today, antidiscrimination law protects gay men and lesbians from homophobia,<sup>55</sup> and ombudsmen work to ensure respect for the rights of all people, LGBTs included. I examined the relevant documents concerning antidiscrimination law and the ombudsman in order to analyze the equivalent situation in Russia.

<sup>54</sup> N 496-O, 2006 at 3.

<sup>55</sup> There is antidiscrimination law in many states of Europe, South America, North America, Africa, Australia and some others. See, for example, an ILGA report by Daniel Ottoson, "State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults" (2010). [http://old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2010.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf) [Accessed on 10 March 2011].

Russia has no antidiscrimination law specifically concerning “sexual orientation.” However, what Russia does have is antidiscrimination law in general. The Constitution of the Russian Federation acts to protect a “human, his rights and liberties” (clause 2). And the Criminal Code of Russia explicitly lists those “humans” whose rights are protected: “Discrimination, that is a violation of the rights, liberties or lawful interests of the human and the citizen on the ground of his sex, race, ethnicity, language, origin, property status and official position, abode, religion, beliefs, membership in social associations or any social groups, shall be punished” (clause 136.1). This list is repeated in several Criminal Code articles. Notably, “sexual orientation” or anything relevant to that notion is not listed; thus, legally speaking, it may not be regarded as a ground for discrimination.

However, the term “social group,” which is included in the law, may protect the rights of lesbians and gay men. The notion of “social group” is very well-protected from discrimination; it is entitled to human rights but legally undefined. What exactly it means to be considered a member of a “social group” is not specified in the Russian law. Therefore, it requires an interpretation from the courts to be applied to gays and lesbians. Yet judges remain silent.

In 2007, LGBT activists tried to force the court to interpret the LGBT community in terms of a “social group” recognized by the law. They claimed that a leader of the Russian Muslims had violated clause 282 of the Criminal Code,<sup>56</sup> when he called for the bashing of gays and lesbians. The appeal to condemn the mufti was not accepted by the Russian prosecutors, so it did not reach the court. The prosecutors stated, based on the conclusions made at their request by the Head of Department for Sociology of Family and Demography at Moscow State University, Dr. A. Antonov, that clause 282 could not be applied, because “sexual minorities are not representatives of a social group, they are a part of a deviant group together with criminals, drug addicts and other people who have different deviations from acceptable behavior.”<sup>57</sup>

This interpretation of the law may be regarded as a violation of rights in itself. And perhaps in another country, the ombudsman would point this out. But the Russian ombudsman’s reports, which are supposed to discover defects of legal practice in the implementation of antidiscrimination law, ignore homosexuality. Neither of his reports says a word about gay men or lesbians suffering violation of their rights.

I wrote to the ombudsman to ask why gay and lesbian issues are never covered in his reports. In his official response to me,<sup>58</sup> he said that “there are very few

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<sup>56</sup> This clause prohibits “actions aimed at the incitement of national, racial, or religious enmity, abasement of human dignity, and propaganda of exceptionality, superiority, or inferiority of individuals by reason of their attitude to religion, national, racial affiliation, language, origin and belonging to any social group, if these acts have been committed in public or with the use of mass media.”

<sup>57</sup> I. Kochetkov (Petrov) and K. Kirichenko, “Polozheniye seksualnykh menshinstv” (“Situation with Sexual Minorities”), in *Prava cheloveka v Rossiyskoy Federatsii: Sbornik dokladov o sobytiyakh 2008 goda (Human Rights in Russian Federation: 2008 Events Report)*, ed. D. Mescheryakov (Moscow: Moscow Helsinki Group, 2009), 344.

<sup>58</sup> The response was mailed to me by ordinary postal service, and it is posted on my research web page: <https://sites.google.com/site/russianlgbtresearch/hot-news-1/perepiskasupolnomocennym>.

complaints per year from sexual minorities” that reach his office. Therefore, “it seems unreasonable to cover this topic in every annual report.” According to the letter, the complaints usually regard bans of “gay-parades” (the Prides) and refusals to provide premises to LGBT organizations. From the point of view of both domestic and international laws, these complaints fall within the domain of human rights; therefore, they also fall under the jurisdiction of the ombudsman. Even though there were few complaints, this could hardly be regarded as an excuse to exclude the issues from the ombudsman’s official reports. Moreover, the small number of complaints rather testifies to the lack of trust in the ombudsman’s work on the part of the LGBT community than to the real situation around gay and lesbian problems in Russia.

What this situation shows is a kind of tolerance towards homosexuality from the ombudsman and the interpreters of the law: they refrain from intervention in the status quo by being silent about homosexual issues, though “tolerance of this sort can easily coexist with ignorance and can certainly coexist with contempt.”<sup>59</sup> As Sarah Lamble puts it, “legal discourses and organizational rationalities constitute queer bodies and sexualities as unthinkable and unknowable.”<sup>60</sup> This applies not only to the state’s official intentions but also to the social, institutional, and political forces that lead to unspeakability.<sup>61</sup>

## 5. The Articulated Discourse

The Russian official discourse on homosexuality is shaped by hidden homophobia. I suggest that this situation produces two different strategies of inclusion in society: conformism and resistance. These strategies, in turn, convene two different rhetorical discourses: one of tolerance and the other of equality, which the Russian LGBT NGOs explore.

In order to illustrate the different approaches of the LGBT organizations, I will focus on the strategies deployed to claim the right to same-sex marriage in Russia. In this regard the NGOs may be divided into two groups: (1) the tolerance group, which consists of eight organizations whose work is dedicated to the invention of a form of same-sex marriage that will not be threatening, and (2) the equality group, which is represented by four organizations that claim equal legal recognition of same-sex marriage in Russia now.<sup>62</sup>

### 5.1 *The Body Adjusted to the Closet*

The first group is very well organized, with headquarters in St. Petersburg and associated organizations in different parts of Russia. Four of these organizations are registered by the Russian authorities: Vykhod (St. Petersburg), Rakurs (Arkhangelsk), Krilija (St. Petersburg), and Krug-Karelia (Petrozavodsk) (the last

<sup>59</sup> A. Phillips, *Which Equalities Matter?* (Oxford: Polity Press, 1999), 28.

<sup>60</sup> S. Lamble, “Unknowable Bodies, Unthinkable Sexualities: Lesbian and Transgender Legal Invisibility in the Toronto Women’s Bathhouse Raid,” *Social & Legal Studies* 18 (2009): 112.

<sup>61</sup> *Ibid.*, 113–114.

<sup>62</sup> This leaves three organisations unaccounted for: one of them represents an extreme queer-anarchy standpoint and acts basically through the language of art; the other two organisations seem to have an unclear position and probably exist as feeble experiments.



being the only registered LGBT rights organizations in the country so far as legal recognition is concerned).<sup>63</sup>

The approach of the tolerance group towards same-sex marriage is described in a booklet, "Family Rights of Gays and Lesbians in Russia" (hereinafter referred to as "Family Rights")<sup>64</sup> published by LGBT-Network in St. Petersburg (an organization, as noted earlier, that hosts Coming-Out, Gender-L, Krug-Karelia, Krilija, Rakurs, Rainbow Syndrome, and some other NGOs). The strategy expounded in "Family Rights" is used by the organizations' activists in their advocacy activities. A hotline on family rights is open 24/7, and monthly seminars are organized in order to explain the points of the strategy and to help gay and lesbian couples to realize these family rights in their everyday lives.

"Family Rights" is a legal manual written with the intention to help lesbians and gay men to register their marriages without actual registration. It provides a strategy for devising written agreements that will, in sum, assemble the same legal rights as those enjoyed by heterosexual couples. I argue that this very strategy contains the heteronormative traits of the discourse described above. The text describes procedures of making one's own de facto same-sex marriage with the legal tools in the given circumstances. In order to follow the strategy, one has to acknowledge that what one does is perverted and must be done in the secrecy of silence and subterfuge. The same-sex marriage proposed in the book is a copy of heterosexual marriage. The only difference is that it is not accomplished by a single legal action of public registration; rather, it is arranged with the help of a number of contracts. This makes same-sex marriage resemble its heterosexual model, while differences do not appear on the surface at all.

Heterosexual marriage in Russia is sexualized to the extent that its legal recognition depends on presumable sexual intercourse between a man and a woman. The strategy of "Family Rights" is to desexualize marriage, turning it into a set of contractual relations between two persons irrespective of their sex and "sexual orientation." In this regard, a marriage is a conjugal cohabitation of two persons who also share property rights and responsibilities. The Civil Code of the Russian Federation provides different possibilities for persons who would like to share common property in the same way as married heterosexual couples. Contractual relations could set a share of each person's income that is divided between the parties one way or another. An apartment or other property could also be divided by contract. Succession rights could be regulated by each partner's will.

"Family Rights" suggests how to arrange even the symbolic dimension of marriage in accordance with its heteronormative understanding. In Russia, a wife is supposed to take her husband's family name and to discard her father's name when she enters into a marriage. The law does not prohibit any person from doing

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<sup>63</sup> The registration was checked on the official registration office website: <http://unro.minjust.ru/NKOs.aspx> [Accessed on 15 October 2012].

<sup>64</sup> *Semeynye prava geev i lesbianok v Rossii (Family Rights of Gays and Lesbians in Russia)*, 2009. Saint-Petersburg: LGBT-Network. Originally available online: <http://lgbtnet.ru/publications/lgbtfamily.pdf> [Accessed on 22 April 2010]. Now stored elsewhere, including: [http://www.infoshare.ru/files/programmy/msm/biblioteka/human\\_rights/lgbt\\_family\\_rights.pdf](http://www.infoshare.ru/files/programmy/msm/biblioteka/human_rights/lgbt_family_rights.pdf) [Accessed on 5 November 2012].

the same, so one of the partners of the same-sex family imagined in the book might change her or his name by means of the appropriate legal procedure. The homosexual bodies who enter into a same-sex marriage in accordance with the book should be homosexual to the least extent possible: they occupy the space which is left to them by the Russian legal discourse—a lacuna behind the normative discourse.

The second chapter of the book concerns kinship. According to Russian law, a single person can adopt a child. “Family Rights” advises that in this case, it is best to be silent about one’s sexual orientation in front of the social workers and the judges who decide whether or not one may become a parent.<sup>65</sup> Homosexual couples can also resort to the help of surrogate fathers and mothers. In both cases, only one partner can officially become the parent of a child. The second partner may get the status of a guardian with the help of a relevant contract.

“Family Rights” shapes a same-sex marriage that has nothing to do with homosexuality. It is a marriage in which sexuality is hidden in the secrecy of the private realm. The homosexual body is publicly presented as a person with no sexual attitude—simply a legal person. As a gay activist points out in reference to LGBT people, “It is necessary to stop considering them as somehow special; it is necessary to stop considering heterosexuality to be special, as well. Homosexuality and bisexuality are given facts of life of a society. Hence, one has to deal with it like he deals with facts.”<sup>66</sup> But what is special about homosexuals is our sexuality. Should we ignore it as tolerance arguments force us to?

“Family Rights” claim that these rights are available to homosexual subjects, even though we have to go through a little more bureaucratic arrangements to assemble them. The booklet inverts “tolerance” as applied to LGBT people and invites the same LGBT people to tolerate subordinated status. This is tolerance that “entails suffering something one would rather not, but being positioned socially such that one can determine whether and how to suffer it, what one will allow from it.”<sup>67</sup> It is authoritative discourse that makes possible this dimension of tolerance—“a posture of indulgence toward what one permits or licenses, a posture that softens or cloaks the power, authority, and normativity in the act of tolerance.”<sup>68</sup>

In the arrangement of a marriage in accordance with “Family Rights,” one can see the “tolerance bargain” introduced by the powerful. The conditions of the bargain work best

for societies in which power is relatively evenly distributed. Since toleration is most commonly called on to regulate relationships between minority and majority groups, the implied bargain is far more contentious.<sup>69</sup>

<sup>65</sup> Ibid., 12.

<sup>66</sup> V. Sozayev, *Mify i fakty o geyakh, lesbiankakh i biseksualakh (Myths and Facts about Gay Men, Lesbians and Bisexuals)* (2010). Originally available online: <http://lgbtnet.ru/publications/mythsandfactslgbt.pdf> [Accessed on 26 April 2010]. Now stored elsewhere, including: <http://www.mhg.ru/files/010/mif.pdf> [Accessed on 05 November 2012], 20.

<sup>67</sup> Brown, *Regulating Aversion*, 26.

<sup>68</sup> Ibid.

<sup>69</sup> A. Phillips, “The Politicisation of Difference: Does This Make for a More Intolerant Society,” in *Toleration, Identity and Difference*, eds. J. Horton and S. Mendus (New York: Macmillan, 1999), 127.

The bargain forces lesbians and gay men in Russia to exist in the lacunas of silence and to get rid of the sexualized features of homosexuality. We are supposed to recognize that our sexuality is perverse, which is why we hide it. Do we actually need LGBT activism to make us invisible, if this action is already quite successfully performed by the authorities?

## 5.2 Coming Out from the Unsaid

The other group of LGBT organizations is far less numerous. As mentioned above, it consists of four NGOs. They are less organized and have no center of power or registered status. The organizations are marginalized by their colleagues as well.<sup>70</sup> The main reason for this is that their position is too politicized, and politicization of the fight for gay and lesbian rights is exactly what the other group of LGBT organizations argues against.<sup>71</sup>

The politicization of the equality group is conditioned by the equality arguments that they use. Equality arguments in an unequal society may appear as a discourse of resistance to the existing social and political powers.<sup>72</sup> And in Russia, equality arguments are employed to claim that homosexuality should be equally respected by law. Since the existing political power fails to provide this situation, it is therefore argued that the authorities do not respect the Constitution (this is especially stressed in the Program for Marriage Equality, which will be discussed further below).

In this debate, the sexuality of the subject who claims equality is important so long as homosexuality is the ground on which equality is currently denied. The homosexual body seeks visibility in the public domain of law; the body resists being understood in terms of deviation and consequently silenced. This argumentation is based on comparisons of the conditions of lesbians and gay men in Russia with those in other parts of the world, where LGBT people are granted equal rights. The Program of the All-Russian Movement for Marriage Equality (hereinafter referred to as “The Program”)<sup>73</sup> is crucial at this point, because it argues that same-sex marriage should be equally recognized by the

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<sup>70</sup> See “And Once Again about Gay-Parade” (St. Petersburg: Vykход [Coming-Out], 2009), <http://piter.lgbtnet.ru/2009/06/16/infopraide-2/> [Accessed on 23 April 2010]. The publication argues against a gay pride march organised by GayRussia. A whole set of activities is evaluated in the publication. What is interesting is that the publication (like many others) is produced by an organization from the tolerance group and directed against an organization from the equality group.

<sup>71</sup> See “Charter of the Interregional Social Movement,” The Russian LGBT-Network, 2006, art. 2.2.1, where political actions are prohibited. This Charter is chosen because it belongs to the head organization, and its charter is replicated in those of the other similar organizations. <http://lgbtnet.ru/news/detail.php?ID=4116> [Accessed on 6 April 2010].

<sup>72</sup> B. Cossman, “Family Inside/Out,” *University of Toronto Law Journal* 44, no. 1 (1994): 32.

<sup>73</sup> Since this research was conducted, the NGO has been disbanded and its information is now available on [gayrussia.eu](http://gayrussia.eu). However, the program itself was removed from open access together with the NGO’s website (it was available at <http://marriageequality.ru/practise/programme-of-russian-marriage-equality-movement.php> [Accessed on 22 April 2010]). The steps of this program are now performed by the GayRussia activists, so it is still a valid strategy for them. See *Pravo na brak (odnopolnye soyuzy) (The Right for Marriage [Same-Sex Unions])*, <http://www.gayrussia.eu/campaigns/marriage.php> [Accessed on 23 October 2012]. The text of the program is also stored on my personal website: <http://lgbtqrightrussia.wordpress.com/background/marriage-equality/>.

Russian authorities. This movement is associated with Moscow gay-parade organizers from GayRussia.<sup>74</sup>

The formal absence of any prohibition on same-sex couples entering into an officially recognized marital relationship is regarded as a promising start in “The Program.” All the prohibited grounds for registering a marriage are listed in clause 14 of the Family Code and homosexuality is not among them. Clause 12.1, which requires “mutual and voluntary consent of a man and a woman” in order to register a marriage in Russia, is understood as an attempt by the authors of the law to promote gender equality: regardless of whether a man or a woman wishes to enter into a marriage with a man or a woman, both of the parties should express a voluntary desire to do so. The activists believe that “attempts to consider the principle of voluntary conjugality between a man and a woman as limiting the notion to the union of two different sexes are absolutely unfounded” (my translation), which certainly is an optimistic point of view.

“The Program” contains two strategies to promote changes in society that will compel the authorities to use the existing Family Law to register same-sex couples or to change the law for the same purpose. First, “The Program” proposes to create a precedent of recognition of a same-sex marriage in Russia according to the law currently in force. Simultaneously, it urges activists to work to promote legal changes that would grant marriage rights to same-sex couples in an unambiguous manner.

The precedent may be created simply by a same-sex couple entering a registry office, claiming equality of marriage, and requesting that the clerks register a same-sex marriage. When the clerks refuse, the couple would go to court. Another way would be to register a marriage in another country (e.g., Canada) and then come back to Russia and claim recognition of the marriage. The authors believe that this kind of legal recognition should not meet any obstacles, because recognition of foreign marriages is provided for by Russian law. The foreign marriage should meet two requirements: it should be a marriage (civil partnership does not count), and it should not contradict the prohibited grounds of the Family Code (where homosexuality is not listed).

“The Program” states that activists will work to arrange such cases and bring them to the Russian courts, which will perhaps refuse to deal with them. However, they will be forced to break the silence around homosexuality in legal discourse. Moreover, the cases will be forwarded to the European Court of Human Rights. This strategy seems to reflect a viable means of fighting against discursive silencing and lacunas. As Brenda Cossman argues, following Judith Butler, “Even when a court refuses to recognize the legal validity of the same-sex marriage or civil union, it is forced to recognize and perform the ‘speakability’ of same-sex marriage.”<sup>75</sup>

The strategy of recognition of same-sex marriage by its non-recognition in court challenges the governmentality function of the silence of the Russian law and

<sup>74</sup> *Minust otkazal geyam v registratsii “Dvizheniya za brachnoe ravnopravie” (The Ministry of Justice Denied Registration of “Marriage Equality” to Gays)*, <http://grani.ru/Politics/Russia/m.175155.html> [Accessed on 23 October 2012].

<sup>75</sup> B. Cossman, “Betwixt and Between Recognition: Migrating Same-Sex Marriages and the Turn toward the Private,” *Law and Contemporary Problems* 71 (2008): 164.

may be quite successful in destroying it. Coming out from the domain of the unspeakable, same-sex marriage becomes a part of our reality: “The marriage is real, just not in the here and now, but in the there and then. The marriages migrate, even if only in the imagination: it is migration that can now be imagined in law, even if it is not actually recognized by the courts as legally valid within their geographic and jurisprudential jurisdiction.”<sup>76</sup> We, then, become truly equal, but the equality has not yet been recognized. The activists have already started to fulfill their strategy: two women got married in Toronto, claimed recognition of the marriage in Moscow and, after refusal, sued Russia in the European Court in Strasbourg.<sup>77</sup>

The difference between the two strategies used by the LGBT organizations in Russia is evident. The first follows the line of silencing governed by the powerful discourse. It recognizes that the margin of discourse is a legitimate place where LGBT subjects are supposed to rest. The second is not free from the mechanisms of governmentality, but it seeks to challenge it and to resist its forces, and therefore, another force emerges. The first strategy adjusts homosexuality to the discursive accounts expressed in the law and politics and contributes to its erasure by diminishing the value of a sexualized subject. The strategy of equality challenges silencing tendencies and at the same time provokes conservative political response or recognition. If the silence is broken, what is said does not necessarily contribute to the recognition of LGBTs as empowered citizens.

## 6. Conclusion

Russian discourse on homosexual matters constitutes a subject without a specific body, so that this subject cannot even be regarded as a social group—a right relevant only for humans made of flesh. So long as homosexuals are absent from the enunciative field of discourse, they are tolerated.

This silencing (derived from homophobia, heteronormativity, and toleration) provides little room for LGBT activism. Some LGBT organizations deploy the arguments of tolerance and resist the sexualization of the discourse of homosexuality. But what this provokes is the erasure of any homosexuality: we have to be adjusted to the discourse in which we do not exist and are treated as ephemeral sexual objects. Consequently, the homosexual body is treated within the tolerance discourse as a heterosexual one. This discourse does not provide for our inclusion in society; or rather, it conditions our inclusion in society by the requirement to be what we are not.

The argument of equality by the other group of LGBT organizations, which aims to resist the silencing in the discourse, appears to be a more promising strategy. However, in an unequal society, arguments for equality “can breed a new kind of intolerance towards intransigent groups.”<sup>78</sup>

The response to the equality strategy has already followed suit. Regional governments celebrated a legal “anti-gay parade” by adopting laws on the prohibition

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<sup>76</sup> Ibid.

<sup>77</sup> *Pravo na brak (odnopolye soyuzy) (The Right for Marriage [Same-Sex Unions])*, <http://www.gayrussia.eu/campaigns/marriage.php> [Accessed on 23 October 2012].

<sup>78</sup> Phillips, *The Politicisation of Difference*, 143.

of “propaganda of homosexuality to minors.” The logic of these legal innovations is built upon the premise that “natural” homosexuals form only a small number of those who are involved in homosexuality, whereas the majority of homosexuals are converted when teenagers by means of “homosexual propaganda,” that is, by public discussion of homosexuality.<sup>79</sup> Based on this argument, regional governments have adopted articles in their administrative codes or children’s rights codes that provide fines from 5,000 to 1,000,000 Russian rubles for those who “propagate” homosexuality. In St. Petersburg, the deputies adopted the law, mixing the familiar old-fashioned wording with some new terms in explaining what homosexual “propaganda” means:

In this article, by public actions directed to propaganda of *muzhelozhstvo*, *lesbianity*, *bisexualism*, *transgenderity* to minors, it is understood the following: intentional activity that involves uncontrolled dissemination of information in open sources, which might harm the health, moral and spiritual development of minors, including if it might form deviant ideas about the social equality of traditional and non-traditional marital relationships.<sup>80</sup>

With a little variation in language, this kind of law has been adopted in Ryazan (2006), Arkhangelsk (2011), Kostroma (2011), St. Petersburg (2012), Novosibirsk (2012), Magadan (2012), and Krasnodar (2012) with, perhaps, many other cities to follow. These legal measures are prompted by active resistance to being silenced, and their aim is to silence homosexuality in response. At the same time, they start to speak of it out loud and open up a public discussion on homosexuality in Russia to renegotiate its status. They employ a rich diversity of phrases to speak about homosexuality in law: starting from New Testament *muzhelozhstvo*, going through medical homosexuality (*gomoseksualizm*), and inventing new terms like “transgenderity” (“*transgendernost*”). This shows that the discourse is unstable and diverse and that there is room for negotiation. But the recent emergence of anti-gay measures also shows that Russia’s acknowledgement of European human rights norms at the level of the Criminal Code and state law can very well coexist with forms of backlash, often at the local or regional level.

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<sup>79</sup> This idea is promoted by Arkhangelsk deputy Aleksandr Dyatlov in his appeal to colleagues in other regions of Russia (see *Arkhangelskie politiki predlozhili zapretit propagandu gomoseksualizma po vsej Rossii* [Arkhangelsk Politicians Offer to Prohibit Propaganda of Homosexuality All Over Russia], Social Information Agency, [http://www.asi.org.ru/ASI3/rws\\_asi.nsf/va\\_WebPages/1E643B23B9096C85442579340025F780Rus](http://www.asi.org.ru/ASI3/rws_asi.nsf/va_WebPages/1E643B23B9096C85442579340025F780Rus) [Accessed 05 November 2012].

<sup>80</sup> The text of the law is available on the official St. Petersburg website (emphasis is mine): <http://www.gov.spb.ru:3000/noframe/law?d&nd=537913971&prevDoc=891831166> [Accessed 05 November 2012].