THE PARADOXICAL INTERRELATIONSHIP OF CHURCH AND STATE IN POST-COMMUNIST RUSSIA: THE RISE AND MANIFESTATION OF POWER VIA THE PRISM OF LGBTQIA RIGHTS

by

ALEKCANDER MARKUC ZHDANOV

A THESIS

Presented to the Russian, East European, and Eurasian Studies Program
and the Graduate School of the University of Oregon
in partial fulfillment of the requirements
for the degree of
Master of Arts

June 2016

THESIS APPROVAL PAGE

Student: Alekcander Markuc Zhdanov

Title: The Paradoxical Interrelationship of Church and State in Post-Communist Russia: The Rise and Manifestation of Power via the Prism of LGBTQIA Rights

This thesis has been accepted and approved in partial fulfillment of the requirements for the Master of Arts degree in the Russian, East European, and Eurasian Studies program by:

Julie Hessler	Chairperson
Craig Parsons	Member
Keith Eddins	Member

and

Scott L. Pratt	Dean of the Graduate School

Original approval signatures are on file with the University of Oregon Graduate School.

Degree awarded June 2016

THESIS ABSTRACT

Alekcander Markuc Zhdanov

Master of Arts

Russian, East European, and Eurasian Studies Program

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The Russian Orthodox Church is seeking to reestablish a leadership role in the spiritual health of the citizenry in post-Communist Russia via a concerted effort to forge an alliance with the Russian government, regardless of the secular constitution. Commencing with perceived preferential legislation, the Church has risen to heightened influence that is subsequently being used to disenfranchise non-traditional sexual communities. This paper offers an extensive cross-examination of legislation and intersectionality that highlights the incongruities of this alliance via international, federal, and religious documents, legal case law, polling data and more to purport that the Church encompasses a higher degree of complexity than was previously assumed, including non-religious self-identification. Ultimately, this paper concludes that the Church, in its current form, functions more as an agency of the State than as a religious entity. Lastly, this paper neither defends nor anathematizes the merits of any theological tenet.

CURRICULUM VITAE

NAME OF AUTHOR: Alekcander Markuc Zhdanov

GRADUATE AND UNDERGRADUATE SCHOOLS ATTENDED:

University of Oregon, Eugene, OR
The University of Texas at Austin, Austin, TX
Austin Community College, Austin, TX
University of Nebraska, Lincoln, NE
East Central University, Ada, OK

DEGREES AWARDED:

Master of Arts in Russian, East European, and Eurasian Studies
University of Oregon, June 2016
Bachelor of Arts in Geography; Russian, East European, and Eurasian Studies
The University of Texas at Austin, May 2014
With High Honors

AREAS OF SPECIAL INTEREST:

Russian Government, Religion, History, Geography
Human Rights
LGBTQIA Rights

PROFESSIONAL EXPERIENCE

Russian Language Instructor, University of Oregon, 2014-2016
International Flight Purser, American Airlines, Inc., 1999-2011

GRANTS, AWARDS, HONORS:

Graduate Teaching Fellowship, Russian, University of Oregon, 2014-2016

PUBLICATIONS

Zhdanov, Alekcander. 2014. “The Dichotomous Reign of Pope Pius XII from 1939-1945: Representative of God or Defender of Catholicism.” *Linguistic, Cultural and Educational Issues of Roma,* 180-195.

ACKNOWLEDGMENTS

I wish to express sincere appreciation to Professors Parsons and Eddins for their unwavering support and assistance in the preparation of this manuscript and throughout my academic career. In addition, special thanks are due to Dr. Julie Hessler, whose exceptional knowledge and guidance provided the foundation upon which to construct this crowning work.

DEDICATION

This thesis is dedicated to my loving husband, Mr. Robert “Ian” Bess, for without his unquestioning and steadfast love and support, this work would not have materialized.

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Abbreviations, Acronyms, and Translations

Church	Russian Orthodox Church
State	Government of the Russian Federation
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
1990 Law	Law of the Russian Soviet Federative Socialist Republic on Freedom of Worship
1997 Law	Law on Freedom of Conscience and Religious Associations
'Gay Propaganda' Law	Law on the Protection of Children from Information Liable to be Injurious to their Health and Development
LGBTQIA	Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersexual, Asexual/Ally Communities
Translations by, or edited by, Alekcander Zhdanov, unless otherwise specified	

CHAPTER I:

INTRODUCTION

The imbroglio over constitutional interpretations and the ramifications of the intersectionality of the religious and political domain in the Russian Federation is creating cause for concern in the Western world, as Russia seeks to emerge from its authoritarian past. The amount of scholarship within the social sciences has only just begun to research the intersectionality of politics and religion, and what has previously been written, has almost exclusively been devoted to the study of Islam in a post-9/11 world. As "religions are (re)entering the public sphere not only to 'defend their traditional turf,' but also to 'participate in the very struggles to define . . . private and public spheres,"' many politicians and theologians are advocating from a perceived position of divine authority to represent their constituencies.[1] A prominent example of this philosophy of gaining significant power and influence to the detriment of others commenced with the 1997 Russian *Law on Freedom of Conscience and Religious Associations* [hereafter 1997 Law],[2] which sought to thwart the influx of foreign missionaries and set up a tiered system of religious hierarchy, with the Russian Orthodox Church [hereafter Church] as a dominant beneficiary, while simultaneously protecting the cultural, religious and historical

[1] Hesli, Vicki L., Ebru Erdem, Arthur Miller, and William Reisinger. "The Patriarch and the President: Religion and Political Choice in Russia." *Demokratizatsiya: The Journal of Post-Soviet Democratization*, 1999: 42.

[2] Российская Федерация. "Федеральный закон от 26 сентября 1997 г. N 125-ФЗ "О свободе совести и о религиозных объединениях" (с изменениями и дополнениями)." *Сайт Конституции Российской Федерации.* 1997. http://constitution.garant.ru/act/right/171640/. (Translations by Xenia Dennen and Larry Uzzell, provided by Keston Institute).

traditions of self-identity and expression in the country. One of the many demographical groups to suffer the effects of marginalization and disenfranchisement of this law were, and are, the non-traditional sexual minority populations [hereafter LGBTQIA]. The banality of favoritism and unconstitutionality that is aiding in the obstruction of Russia's emergence from its turbulent, Communist past cannot easily be dismissed, if the country seeks to enter into and celebrate its pluralistic and heterogeneous society in the twenty-first century. A post-authoritarian system can "no longer base itself on the unadulterated, brutal, and arbitrary application of power, eliminating all expressions of nonconformity,"[3] if democratic ideals, such as "plurality, diversity, independent self-constitution, and self-organization,"[4] are respected and used as a foundation for further democratic development. 'Living the truth' via an 'authentic existence' is the only option for challenging the status quo, regardless of the expected consequences.[5] However, the practical application of this principle requires more than simple verbiage and belief.

In order to understand the unique partnership between the Church and the Russian government [hereafter State], it is imperative to acknowledge the rhetoric from prominent officials within their respective domains. Then-Metropolitan Kirill and Later-Patriarch of Moscow and All Russia stated:

> [O]ur church is in no way striving to receive the status of a state church . . . On the other hand, our study of past experience has convinced us of the

[3] Havel, Vaclav. "The Power of the Powerless." In *Citizens Against the State in Central-Eastern Europe*, edited by John Keane, 125-214. London: Hutchinson, 1978: 127.

[4] Ibid., 134.

[5] Ibid., 148.

> necessity of constructing a *partnership* [my emphasis] with the State, based on mutual beneficial cooperation in the interests of society as a whole. Such a partnership would presuppose the conclusion of agreements which would create the proper legal foundation for the Church's social ministry.[6]

The Church wants an 'alliance' with the State, including all of the favored benefits and privileges that the State will grant, while occupying the role of *de facto* state religion without the official title. The other traditional religions of Russia include Judaism, Islam, and Buddhism and are technically privy to similar rights afforded in the 1997 Law to the Church, but the ultimate authority has been relegated to local authorities and is subject to interpretation. Therefore, the Church succeeded in its mission via the enactment of the 1997 Law. Lawrence Uzzell correctly asserted that "the Western missionaries themselves have a lot to answer for, for their insensitivity in going into a place that has had thousands of years of Christianity . . ."[7] Yet regardless of guilt and negligence on all sides, the 1997 Law appears to be unconstitutional as it contradicts a plethora of official government verbiage, found within the 1993 Russian Constitution.

The entanglement of politics and religion did not originate in Russia or any other modern nation-state. Aristotle wrote that "A tyrant must put on the appearance of uncommon devotion to religion. Subjects are less apprehensive of illegal treatment from a ruler whom they consider god-fearing and pious. On the other hand, they do less easily move against him, believing that he has the gods on his side" and Seneca the Younger has been quoted as stating that, "Religion is

[6] Blitt, Robert C. "How to Entrench a De Facto State Church in Russia: A Guide in Progress." *2008 B.Y.U.L. Rev. 707*, 2008: 769.

[7] Ibid., 733.

regarded by the common people as true, by the wise as false, and by rulers as useful."[8] With the Islamic, Buddhist, and Jewish nations excluded for simplicity, present-day Europe, likewise, is host to various countries that have a close church and state intersectionality encoded in their constitutions. These include: (1) Roman Catholicism in Liechtenstein and Malta; (2) Orthodoxy in Greece and Bulgaria; (3) Anglicanism in England; (4) Lutheranism in Denmark, Iceland, Norway, Finland, and Sweden; (5) Calvinism in Scotland; and (6) unique religious tenet formulations in France and Hungary. Thus, in theory, a close interrelationship of church and state in Russia is not distressing or unfamiliar.

In the early Soviet era, the State was equally influential concerning Church actions by aiding in the creation of a pro-Kremlin Orthodox Renovationist movement. Within this sect of the Orthodox Church, 'Red Priests' (Orthodox priests who had a greater allegiance for the State than the Church, often times with simultaneous KGB affiliations) aided the Russian State in the goal of destabilizing the entire Orthodox Church; ultimately, they were later disbanded by the State when their usefulness was no longer needed.[9] Joseph Stalin later capitalized on an opportune time to reestablish the Moscow Patriarchate in 1943 in the midst of the Great Patriotic War, for he correctly believed that the Soviet citizenry would not fight for him or the State, but would fight for Mother Russia and the Church.[10]

[8] Cline, Austin. "Aristotle on Politics & Religion: Tyrants Need to be God-Fearing and Pious." Atheism. March 2, 2016. http://atheism.about.com/od/weeklyquotes/a/aristotle01.htm.

[9] Roslof, Edward E. *Red Priests: Renovationism, Russian Orthodoxy, and Revolution, 1905-1946.* Indianapolis, IN: Indiana University Press, 2002.

[10] Miner, Steven Merritt. *Stalin's Holy War: Religion, Nationalism, and Alliance Politics, 1941-1945.* Chapel Hill, NC: The University of North Carolina Press, 2003.

Lastly, Dunlop wrote that the Church was used as an 'empire-saving' institution during the early days of the newly-constructed Russian Federation, and would ultimately be used as the foundation for a reconstitution of the former Soviet Union, if ever that should materialize.[11] Admittedly, these are but a few of the many examples of Church and State intersectionality in the past.

As a foundational statement on which to frame the pressing argument for a Church and State alliance, former Patriarch Aleksey II was succinct. He stated that "Russia came to exist as a state on the basis of the Orthodox religion . . . and it is on the basis of the Orthodox religion that the Motherland can regain its magnificence."[12] The issue is not whether or not this statement is true, but which defining characteristics of Orthodoxy will be used to accomplish this goal. As history so accurately records, religion has always had a corruptive element which has been used as a catalyst to attain power and to control the masses. The environment in the Russian Federation is a modern manifestation of such corruption, which will need a catalyst of new methods of pressure in order to achieve a transformation.

This paper elucidates the differences in Russian Orthodoxy between divinely inspired religious Orthodoxy and a nationalist self-identifying cultural/secular Orthodoxy that can be used as demographical category, via a detailed analysis of the Russian Constitution, European Union and United Nations

[11] Dunlop, John B. *The Russian Orthodox Church as an 'Empire-Saving' Institution.* Vol. 3, in *The Politics of Religion in Russia and the New States of Eurasia*, 15-78. New York: M.E. Sharpe, 1995.

[12]Fagan, Geraldine. *Believing in Russia - Religious Policy After Communism.* New York: Routledge, 2013: 199.

documents, international case law, opinion polling data and more. This paper ultimately purports that the present-day Church hierarchy is essentially an asymmetrical political construct and agency of the State. The structure of this paper rests on the foundation of an era for the creation of increased State power via the legitimating mechanism of the Church, and then followed by an example of the manifestation of that power utilizing the LGBTQIA community and the passage and implementation of the *Law on the Protection of Children from Information Liable to be Injurious to their Health and Development of 2013* [hereafter 'Gay Propaganda' Law]. This paper argues that the church structure is based not on "gospel values of freedom, truth and enlightenment, but on fear, authoritarianism and the promotion of nationalism under the guise of religious zeal. This kind of fake patriotic religion deifies the State and gives divine sanction to a nation's imperialism."[13] As Samuel P. Huntington wrote and I posit in this paper, "[i]n Islam, God is Caesar; in China and Japan, Caesar is God; in Orthodoxy, God is Caesar's junior partner."[14]

[13] Woods, Mark. "How the Russian Orthodox Church is Backing Vladimir Putin's New World Order." *Christian Today.* March 3, 2016. http://www.christiantoday.com/article/how.the.russian.orthodox.church.is.backing.vladimir.putins.new.world.order/81108.htm.

[14] Huntington, Samuel P. *The Clash of Civilizations and the Remaking of World Order.* New York: Simon & Schuster, 1996: 70.

The Multi-Facets of 'Religion'

The concept of 'religion' has not been succinctly defined in the social sphere or within the realm of international law. Lemert wrote, that "Since World War II, the sociology of religion has unnecessarily confined itself to a sociography of church religion."[15] This has systematically excluded many religions that question the value of obligatory beliefs and practices.[16] In the twenty-first century, religion has been defined as "the understanding of the world we live in and its understanding of what makes a person a human, a hero, or a villain."[17] However, the scholarly discourse of what is and what is not a religion strengthened with the work of Robert Neelly Bellah, who challenged the importance and mandatory concept of a supernatural entity within religion and the possibility of its existence in the secular world.[18] To some adherents of religious faith, the only acceptable definition must address tenets of redemption and salvation. Ultimately, though, religion came to represent "all of the disproved, unproven, and unprovable assumptions and beliefs about reality that were left behind after science and rationality had extracted their understanding of the world,"[19] whether or not we are

[15] Lemert, Charles C. "Defining Non-Church Religion." *Review of Religious Research*, 1975: 186.

[16] Rodrigues, Hillary, and John S. Harding. *Introduction to the Study of Religion.* New York, NY: Routledge - Taylor & Francis Group, 2009, 2.

[17] Hunt, Robert. "No Freedom from Religion." *Patheos.* October 18, 2012. http://www.patheos.com/blogs/roberthunt/2012/10/no-freedom-from-religion/.

[18] Bellah, Robert N. "Civil Religion in America." *Daedalus*, Summer 1988: 97-118.

[19] Rodrigues and Harding, 19.

speaking of atheism by Febvre, the philosophy of Descartes, or the childish nature of religion by Feuerbach.[20]

Within international law, the term 'religion' is equally undefined, even with the existence of clauses which reference its freedom in official governmental documents.[21] Religion exists as 'belief,' which "pertains to the convictions that people hold regarding such matters as God, truth, or doctrines of faith," and simultaneously, religion exists as 'identity,' which "emphasizes affiliation with a group . . . something akin to a family, ethnicity, race, or nationality . . . and is something into which people believe they are born rather than something to which they convert after a process of study, prayer, or reflection."[22]

It is upon these bifurcated distinctions that this work is founded and framed, in order to explicate the pivotal moment in history when the Church rose to influential prominence in post-Communist Russia, and to expound on the manifestation of this power via the marginalization and disenfranchisement of the LGBTQIA communities.

[20] Oesterdiekhoff, Georg W. "What is Religion and How is it Explainable?" *Richard Dawkins Foundation for Reason & Science.* November 21, 2014. https://richarddawkins.net/2014/11/what-is-religion-and-how-is-it-explainable/.

[21] Gunn, T. Jeremy. "The Complexity of Religion and the Definition of "Religion" in International Law." *Harvard Human Rights Journal* (Harvard Law School) 16 (2003): 190.

[22] Ibid., 201.

CHAPTER II:

THE RISE OF THE CHURCH AND STATE ALLIANCE

The 1997 Law

A significant indication of the rise to power and influence by the Church was the passage and implementation of the Boris Yeltsin-era 1997 *Law on Freedom of Conscience and Religious Associations.*[23] The 1997 Law legally and exclusively grants a plethora of rights and privileges, such as financial and tax benefits, the right to own and operate private property, perform charitable activities, permission to disseminate and receive religious information, and more to registered religious 'organizations,' that creates tension with observers.[24] The passage and enactment of this law repealed the Mikhail Gorbachev- and Soviet-era 1990 *Law of the Russian Soviet Federative Socialist Republic on Freedom of Worship* [hereafter 1990 Law], which insured all religious associations were to be equal before the law without any preferential treatment from the State.[25] The 1997 Law appears to violate established international law to which the Russian Constitution grants deference, as stated in Article 15, Paragraph 4: "the universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty

[23] Российская Федерация, 1997 Law.

[24] Ibid.

[25] CCCP. "Law of the Russian Soviet Federative Socialist Republic on Freedom of Worship (25/10/1990)". Uniroma3. October 25, 1990. http://host.uniroma3.it/progetti/cedir/cedir/Lex-doc/Ru_l_1990.pdf., Art. 5.

or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied."[26]

The 1990 Law, signed by Mikhail Gorbachev, the President of the Soviet Union and the General Secretary of the Central Committee of the Communist Party of the Soviet Union, stated that, "All religions and religious associations shall be equal before the laws of the state. No religion or religious association shall enjoy any advantages or be subjected to any restrictions relative to others. In matters of freedom of worship and belief the state shall be neutral, that is shall not favor any religion or outlook."[27] In contrast, Russian President Boris Yeltsin signed the 1997 Law which affords the Russian Orthodox Church [hereafter Church] an elevated status in the preamble of the document. It reads that, ". . . recognizing a special role of the Orthodox Church in the history of Russia, the formation and development of its spirituality and culture . . ."[28] Whether or not the intent was to grant special rights and privileges to the Church, the bulk of the law provides evidence that cannot easily be dismissed as anything other.

The 1997 Law distinguishes two different types of religious associations: 'groups' and 'organizations.' A 'group' is defined as a voluntary association of citizens, formed for the goals of joint confession and dissemination of their faith, carrying out its activities 'without required state registration'[29] and without

[26] Российская Федерация. "Конституция Российской Федерации". Constitution. 2015. http://www.constitution.ru/index.htm.

[27] СССР, 1990 Law, Article 10.

[28] Российская Федерация, 1997 Law, Preamble.

[29] United States Department of State. 2010. *Russia.* Washington, D.C.: U.S. Department of State. http://www.state.gov/documents/organization/171717.pdf.

obtaining the legal capabilities of a legal personality; an entity where citizens are to inform the local authorities about its creation and the beginning of its activities; and an entity that has the right to conduct worship services, to carry out religious rituals and ceremonies.[30] An 'organization' is defined as a free association of citizens, formed with the goals of joint confession and dissemination of their faith, and registered as a legal personality in accordance with practice established law; an entity "consists of ten or more members or followers who are at least 18 years old and who are permanently residing in one locality; has been functioning in the Russian Federation for no fewer than 15 years; and has been formed by a central religious organization.[31] The creation of a new 'organization' is complex, for it must have confirmation from the organs of the local government that it has existed for no less than 15 years on the said territory, or confirmation from a centralized religious organization of the same creed that it forms part of its structure.[32] At the time of implementation of the 1997 Law, a religious institution must have operated within Russia or the former Soviet Union since 1982, or has operated as a branch of a centralized religious organization. The Russian Orthodox Church qualifies for the favored 'organization' classification, but so do many other faith-based associations. Per the Russian Ministry of Defense,[33] as of January 1, 2004, the number of registered religious 'organizations' included:

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[30] Российская Федерация, 1997 Law, Article 7.

[31] Ibid., Article 8.

[32] Ibid., Article 9.1.

[33] Filatov, Sergei and Roman Lunkin. March 2006. "Statistics on Religion in Russia: The Reality Behind the Figures." *Religion, State, & Society* (Routledge) 34(1): 44.

- Russian Orthodox Church 10,767
- Old Believers 267
- Roman Catholics 235
- Armenian Apostolic 57
- Pentecostals 1460
- Baptists and Evangelicals 1571
- Seventh-Day Adventists 620
- Lutherans 202
- Methodists 98
- Jews 256
- Muslims 3397
- Buddhists 180

The U.S. Department of State recorded, again per the Russian Ministry of Defense in 2010, that there were 23,494 registered organizations in Russia, of which 54% were affiliated with the Russian Orthodox Church.[34] Deductive reasoning suggests that these are favored religious 'organizations,' because, as aforementioned, a religious 'group' is not required to register with the State, unless attempting to transition to the favored status.

Classification status is paramount. The transition process for a religious 'group' to a religious 'organization'[35] is not only possible but fairly benign from a legal perspective. A religious 'group' maintains the status of a juridical person while reregistering each year until the 15 year mandatory period has elapsed.[36] A religious 'organization' can also be bifurcated as well, between 'local' and 'centralized,' with the latter being comprised of three 'local' organizations.[37]

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[34] U.S. Department of State, "Russia."

[35] Российская Федерация, 1997 Law, Article 7.2.

[36] Ibid., Article 27.3.

[37] Ibid., Article 8.

However, the State and courts do not mandate an unbiased interpretation of the 1997 Law; thus, arbitrary enforcement of regulations has become the norm.

The aforementioned list, along with the traditional religions of Judaism, Islam, and Buddhism as proclaimed in the Russian Constitution, all equally qualify as a religious 'organization' via the 1997 Law statutes, but again, enforcement and interpretation of the law has been consigned to the local authorities without a clear and concise mandate from the federal level.

In order to determine whether or not the 1997 Law creates an unconstitutional alliance between the Church and State, it is prudent to begin the process with elucidation of key components of the 1993 Russian Constitution, beginning with the Preamble. It reads:

> We, the multinational people of the Russian Federation, united by a common fate on our land, establishing human rights and freedoms, civic peace and accord, preserving the historically established state unity, proceeding from the universally recognized principles of equality and self-determination of peoples, revering the memory of ancestors who have conveyed to us the love for the Fatherland, belief in the good and justice, reviving the sovereign statehood of Russia and asserting the firmness of its democratic basic, striving to ensure the well-being and prosperity of Russia, proceeding from the responsibility for our Fatherland before the present and future generations, recognizing ourselves as part of the world community, adopt the Constitution of the Russian Federation.[38]

By confirming the rights of the individual to freedom of religion and conscience, personal equality, proclaiming that Russia is a secular state, codifying the historical significance of certain religions, and aspiring to promote mutual tolerance, the Preamble of the Russian constitution appears to render the 1997 Law

[38] Российская Федерация, "Конституция."

unconstitutional. However, the violations of this law run much deeper and conflict with more than simply an introductory phrase of the federal document.

Principle Violations

This law is seemingly unconstitutional when held against the standard of the Russian Constitution, as well as being in direct conflict with two other human rights conventions, to which the Russian Federation has pledged to adhere.[39] The Oxford Dictionary defines 'unconstitutional' as "not in accordance with a political constitution . . . or with procedural rules."[40] For further clarification, a specific law, or article/section thereof, is deemed unconstitutional when it cannot simultaneously exist in conjunction with the established article/sections of a constitution, creating an impossible scenario when both are deemed as correct and enforceable. Article 15, Paragraph 4 of the Russian Constitution reads that the universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component and part of its legal system. If an international treaty or agreement of the Russian Federation establishes other rules than those envisaged by law, the rule of the international agreement shall be applied. The two international agreements in question include the International Covenant on Civil

[39] Ibid., Article 15.4.

[40] Oxford Dictionary.
http://www.oxforddictionaries.com/us/definition/american_english/unconstitutional

and Political Rights [hereafter ICCPR],[41] and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms [hereafter ECHR],[42] as well as legal case law from the European Court of Human Rights [hereafter ECtHR].[43] These violations include the right of equality, or non-discrimination; the freedom of thought, conscience, and belief (or religion); the freedom of expression; and, the freedom of association. In all, the violations are difficult to discount.

To illuminate these violations, it is imperative to begin the analysis with the 1993 Russian Constitution. The federal document declares that it shall have supreme juridical force, direct application and shall be used on the whole territory of the Russian Federation. Laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution of the Russian Federation. This is roughly equivalent, although not identical, to the Supremacy Clause of the U.S. Constitution, which reads that "this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[44]

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[41] United Nations. "International Covenant on Civil and Political Rights." United Nations Office of the High Commissioner for Human Rights. March 23, 1976. http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

[42] ECHR. European Convention on Human Rights. June 1, 1950. http://www.echr.coe.int/Documents/Convention_ENG.pdf.

[43] ECtHR. *European Court of Human Rights.* 2016. http://www.echr.coe.int/Pages/home.aspx?p=home&c=.

[44] United States. The Constitution of the United States. Malta, ID: National Center for Constitutional Studies, 2012, Article VI, Paragraph 2.

Additionally, the Russian Constitution must be consistent with international human rights standards, as "state protection of the rights and freedoms of man and citizen shall be guaranteed in the Russian Federation" and "everyone shall be free to protect his rights and freedoms by all means not prohibited by law."[45] Additionally, "the universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation establishes other rules than those envisaged by law, the rules of the international agreement shall be applied."[46] Continuing, Article 17, Paragraphs 1-3 read:

1. In the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and according to the present Constitution.
2. Fundamental human rights and freedoms are inalienable and shall be enjoyed by everyone from the day of birth.
3. The exercise of rights and freedoms of man and citizen shall not violate the rights and freedoms of other peoples.[47]

Within this framework, all religious 'organizations' should be a beneficiary of the rights and privileges of the 1997 Law; however, due to local interpretation and bias, the Church receives more benefits than most.

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[45] Российская Федерация Constitution, Article 45.1,2.

[46] Ibid., Article 15.4.

[47] Ibid., Article 17.1,2,3.

Equality. The Russian Constitution,[48] the ECHR,[49] and the ICCPR[50] all fundamentally declare the same idea that all people shall be equal before the law and that the State is the guarantor of such. These declarations are in addition to the widely known and accepted Universal Declaration of Human Rights,[51] which was proclaimed at the United Nations General Assembly in Paris on December 10, 1948, as General Assembly resolution 217, of which the Soviet Union was a member of the formulating commission, but abstained in the final voting process and was never ratified; however, the UN Declaration of Human Rights was subsequently divided into two different documents, the ICCPR and the International Covenant on Economic, Social, and Cultural Rights [ICESCR], which the Soviet Union later signed and ratified both documents (see Tables 1 and 2). More precisely, the ECtHR held that "a distinction based essentially on a difference in religion alone is not acceptable."[52] The ICCPR similarly proclaims that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds of various demographics including religion.[53] The Russian Constitution, itself, is far more explicit

[48] Ibid., Article 19.1,2.

[49] ECHR, Article 14.

[50] ICCPR, Article 26.

[51] United Nations. "The Universal Declaration of Human Rights." *United Nations.* December 10, 1948. http://www.un.org/en/documents/udhr/.

[52] *Hoffmann v. Austria.* 255 Eur. Ct. H.R. (ser. A) at 61 (ECtHR, 1993). The case involved a divorcee who converted to the Jehovah's Witnesses, and wanted sole legal and physical custody of her children, away from her Roman Catholic ex-husband.

[53] ICCPR, Art. 26. This prohibition of discrimination includes a "non-derogation clause" for use in times of national emergency, and defined as "a provision in a treaty that allows the signator to refuse to comply with certain provisions," per USLegal.com.

concerning equality, as it reads that "in the Russian Federation ideological diversity shall be recognized, no state or obligatory ideology may be established as one, . . . public associations shall be equal before the law, and the creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife shall be prohibited."[54] Immediately following, the Russian Constitution makes powerful proclamations that "The Russian Federation is a secular state, no state or obligatory religion may be established, and religious associations shall be separate from the State and shall be equal before the law."[55] Therefore, evidence suggests that the 1997 Law appears to be unconstitutional by both the standards and declarations of the Russian Constitution, and by the international treaties of which it has deferred.

Exclusive Benefits to a Religious 'Organization'

A plethora of benefits are afforded to any religious 'organization' based upon the legality of the 1997 Law. However, these benefits continue to be arbitrarily and discriminately provided. The verbiage of the 1997 Law does not support the biased approach for the Church, as they receive certain benefits while

[54] Российская Федерация, Constitution, Article 13.1-5.

[55] Ibid., Article 14.1,2.

other religious 'organizations' do not. While the following is not fully enumerated, it clearly establishes the discriminatory actions and bias of local authorities for the Orthodox Church. Additional, and very prominent benefits that were allocated to the Church, solidified upon the spirit of the 1997 Law, will be addressed in a later section.

Financial Benefits and Taxes. Per the 1997 Law, a religious 'organization' exclusively benefits from tax-exemption. However, reality differs from established law. The 1997 Law declares that the State "shall effect regulation in granting to religious organizations tax and other exemptions, extend financial, material and other assistance to religious organizations in the restoration, maintenance and protection of buildings and projects being monuments of history and culture as well as in arranging the teaching of general educational subjects at educational establishments set up by religious organizations as is envisaged under the laws of the Russian Federation on education."[56] Thus, the Church as a religious 'organization' is tax-exempt, and additionally, receives money from the State for religious education; accordingly, this demonstrates unconstitutional bias and privilege to the Church, as some religious 'organizations' must pay taxes.

Baptists and Pentecostals congregations are but two of the religious 'organizations' where tax exemption status eludes them. Igor Nikitin, head of the 200-member Association of Christian Churches in Russia and prominent charismatic leader, said, "It can get quite expensive [the bureaucratic paper trail] . . . You must report to the tax inspectorate one a month, for example. And even if

[56] 1997 Law, Article 4.3.

you don't owe any tax, you still need to hire an accountant just to fill in all the forms properly."[57] If tax exemption was the norm as a religious 'organization,' this statement would be illogical. Additionally, Vitaly Vlasenko, Director of External Church Relations for the Russian Union of Evangelical Christians-Baptists, stated that "it is obvious that government officials . . . are partial to the Orthodox . . . and issues of registration, documentation and taxation have become very bureaucratic and issues once settled through negotiation with government officials now often wind up in court."[58] Thus, the rights and privileges afforded a religious 'organization' via the 1997 Law are subject to local interpretation.

Property Ownership and Operation. A religious 'organization' is authorized to own plots of land and buildings, and operate any activity that is necessary. This can include acquired or created properties, via donation or transfer. It has the right to own property abroad, and creditors may not institute any proceedings against property intended for worship purposes.[59] The 1997 Law confirmed the authority established in an April 23, 1993 decree from Then-President Boris Yeltsin, which instructed the government to "to carry out the gradual transfer of houses of worship . . . from federal ownership to the ownership of or usage by religious organizations."[60] However, Protestant and Catholic

[57] Brown, Frank. 2000. "Russian Pentecostals Have Cautios View of Vladimir Putin." *Charisma Magazine.* May 31. http://www.charismamag.com/site-archives/134-peopleevents/people-events/34-russian-pentecostals-have-cautios-view-of-vladimir-putin.

[58] Allen, Bob. 2008. "Baptists in Russian Town Claim Bureaucrats Restricting Religious Freedom." *The Baptist Standard.* December 1. https://www.baptiststandard.com/news/world/8911-baptists-in-russian-town-claim-bureaucrats-restricting-religious-freedom.

[59] 1997 Law, Article 21.1-5.

[60] Fagan, Geraldine. 2005. "RUSSIA: Who owns religious property?" *Forum 18 News Service.* August 30. http://www.forum18.org/archive.php?article_id=639

communities are continuing to face obstacles concerning ownership of facilities.[61] For example, as of 2005, Catholics had their historical churches in Karelia, Kursk, Tatarstan and Tyumen returned to them, but their churches in Irkutsk, Khabarovsk, Smolensk and Yaroslavl had not been returned.[62] Another example of the blatant bias against non-Orthodox religions include hostilities toward the Muslim community of the Volga Spiritual Directorate in the Ozinki district, a traditional religion in addition to being a religious 'organization.' When an Orthodox church received donated building materials for a new church, the mosque, when asking for similar assistance, was rebuked by the local authorities by stating, "Am I your servant, to be finding you roof tiles? Don't come to me with such questions again."[63] Thus, the 1997 Law is locally interpreted and enforced in the absence of a federal mandate.

Charitable Activities. A religious 'organization' is permitted to carry out charitable activities,[64] and has the right to carry out religious rites in health centers and hospitals, in children's homes, in old people's homes and institutions for the handicapped, and in institutions applying sentences of imprisonment for criminal offences at the request of the citizens held there in premises specially designated by the administration for these purposes.[65] However, non-Orthodox religious

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[61] Fagan, Geraldine. 2005. "RUSSIA: Growing Obstruction to Protestant Church Property Ownership." *Forum 18 News Service.* August 24. http://www.forum18.org/archive.php?article_id=637.

[62] Fagan, "RUSSIA: Who owns religious property?"

[63] Fagan, "RUSSIA: Growing Obstruction."

[64] 1997 Law, Article 18.1.

[65] Ibid., Article 16.3.

'organizations' are criticized for "combining and indirectly linking their charity activity with missionary work,"[66] with the chief critics being among the Russian Orthodox Church and their officials, espousing "special respect" for Orthodoxy.

Permission to Disseminate and Receive Religious Information. A religious 'organization' has the right to produce, acquire, export, import and distribute religious literature,[67] including the authorization to create a mass media.[68] The Church is also permitted to invite foreign citizens to preach and conduct religious activities.[69]

Discrimination between Citizens and Non-Citizens. The 1997 Law contains a *proforma*[70] statement that foreigners residing in Russia have the right to hold religious beliefs.[71] However, the 1990 Law allowed 'both' citizens and non-citizens to found associations for religious activities.[72] The 1997 restriction is not limited to officially recognized and formal organizations, but also extends to 'informal' operations.[73]

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[66] МХГ. 2003. "Conditions for the Charitable Activity of Religious Associations in Russia." *Московская Хельсинская Группа: Старейшая из Ныне Действующих Российская Правозащитная Организация.* http://www.mhg.ru/english/1F52412.

[67] 1997 Law, Article 17.1.

[68] Ibid., Article 18.2.

[69] Ibid., Article 20.2.

[70] A Latin phrase defined by Translegal.com, meaning "as a matter of form". In practice, the phrase usually refers to an act or document which is preliminary or satisfies the minimum requirements in a perfunctory manner. It can though differ in meaning depending on the context.

[71] 1997 Law, Article 3.1.2.

[72] Soviet 1990 Law, Article 4.

[73] 1997 Law, Article 13.2.

Religious Services Prohibited by Foreign Nationals and Foreign Religious Associations. The 1997 Law proclaims that a representative body of a foreign religious organization may not engage in liturgical or other religious activities, and will not receive the status of a religious association as established by this federal law.[74]

Non-Organization Believers Permitted to Communicate with Foreign Believers. The 1997 Law proclaims that only religious 'organizations' have the right to establish and maintain international links and contacts, including those for the goals of pilgrimages, participation in meetings and other undertakings, for receiving religious education, and also they have the right to invite foreign citizens for these purposes[75] Similarly, only religious 'organizations' exclusively possess the right to invite foreign citizens for professional purposes, including preaching and religious activity in the said organizations in accordance with federal laws.[76]

Other Benefits. Many other benefits are afforded to a religious 'organization,' to which religious 'groups' are excluded. These benefits are clearly outlined in the text of the 1997 Law, but their inclusion would appear superfluous for the purpose of this work.[77]

In sum, the presented discourse seemingly and convincingly questions the constitutionality of Russian Federal Law No. 125-FZ of September 26, 1997, as it

[74] Ibid., Article 13.2.

[75] Ibid., Article 20.1.

[76] Ibid., Article 20.2.

[77] Ibid., Article 15-24.

establishes a two-tiered system which exclusively benefits a religious 'organization,' of which many religious entities qualify, while often simultaneously and unconstitutionally benefiting the Church via favoritism and bias, for the Church is but only one of the legally registered religious 'organizations.' The freedoms and rights, which were guaranteed under the 1990 Soviet Law, were subsequently abolished for all Western evangelical and missionary-focused denominations, including for the traditional religions of Judaism, Islam, and Buddhism. Therefore, it is derived from the established evidence that the Russian Federation is a *de facto* religious State, governing in direct violation of constitutional law and international conventions.

Violation of Substantive Rights

Freedom of Religion. In addition to the specific benefits afforded a religious 'organization' and principle violations through the 1997 Law, there are a plethora of rights addressing freedom of thought, conscience, and religion, which are detailed in the Russian Constitution,[78] ECHR,[79] and the ICCPR.[80] All three

[78] Российская Федерация, Constitution, Article 28: Everyone shall be guaranteed the freedom of conscience, the freedom of religion, including the right to profess individually or together with others any religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views and act according to them.

[79] ECHR, Article 9.1,2: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

[80] ICCPR, Article 18.1: Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

documents clearly state that everyone has the right to these freedoms. However, there are limitations. The Russian Constitution,[81] the ECHR,[82] and the ICCPR[83] allow for specific limitations only to the extent required to provide for the constitutionality of the country, public safety and order, and such, which puts the 1997 Law in contradiction with these agreed upon statutes. Specifically, the ECtHR established precedent, as it held that it was illegal for the Greek government to impose restrictions on the activities of minority religions, thereby giving favor to the Greek Orthodox Church, based upon "historical considerations," for it did not abide by the approved limitation parameters.[84] The ECtHR further held in this case that "the need to secure true religious pluralism [is] an inherent feature of the notion of a democratic society . . ." In the General Committee comments, it is written that:

> The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including Articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers. In particular, certain measures discriminating against the latter, such as . . . imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under Article 26.[85]

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[81] Российская Федерация, Constitution, Article 55.3.

[82] ECHR, Article 9.2.

[83] ICCPR, Article 18.3.

[84] *Manoussakis and Others v. Greece.* __ Eur. Ct. H.R. (ser. A), No. 59/1995/565/651 (ECtHR, September 26, 1996). The case involved four Greek Jehovah's Witnesses from Crete who were using rented rooms as places of worship. The Greek Constitution forbids proselytism and establishing a church with written prior authorization from the authorities. Ultimately, the plaintiffs were denied entry to their rented rooms.

[85] See (a) 1993 "General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights,"

The ubiquitous nature of a particular faith is a not a justifiable rationale for imposing these types of laws. The 1989 Vienna Concluding Document of the Conference on Security and Cooperation in Europe directs governments to "foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers . . ."[86] Additionally, the 1981 United Nations Declaration proclaims that religious groups have the right to "worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes.[87] And, this right to worship includes doing all that is necessary or needed to accomplish this goal, without interference from a governing authority.

Freedom of Expression. As with the tenet of religious freedom and choice, freedom of expression is likewise afforded the citizenry under the Russian Constitution,[88] the ECHR,[89] and the ICCPR.[90] Respectively, limitations exist as before mentioned concerning the protection of fundamental principles of the

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ICCPR/C/21/Rev.1/Add.4, 27 September 1993, *Addendum, General Comment No. 22 (48) (art. 18)* ["General Comment"]; and (b) the 1981 United Nations "Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief," adopted Jan. 18, 1982, GA Res. 55, 36 U.N. GAOR Supp. (No. 51), U.N. Doc. A/RES/36/55 (1982) ["1981 UN Declaration"].

[86] Conference on Security and Co-operation in Europe: Concluding Document from the Vienna Meeting, Nov. 4, 1986-Jan. 17, 1989, 28 I.L.M. 527 ["Vienna Concluding Document"].

[87] United Nations. "Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief A/RES/36/55." United Nations General Assembly. November 25, 1981. http://www.un.org/documents/ga/res/36/a36r055.htm, Article 6.

[88] Российская Федерация, Constitution, Article 29.1.

[89] ECHR, Article 10.1.

[90] ICCPR, Article 19.2.

constitutional system and more within the State,[91] the ECHR,[92] and the ICCPR.[93] Manfred Nowak[94] (1993) considers freedom of expression to be a subset category within freedom of religion, and the same rationales which are used to defend religious freedoms are offered *mutatis mutandis*[95] to freedoms of expressions. The ECtHR held more clearly in 1995, by declaring that:

> Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfillment . . . [I]t is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society.[96]

The case for the unconstitutionality of the 1997 Law is steadily strengthening.

Freedom of Association. Of the significant areas of unconstitutionality which remain are the freedom of association, which is afforded the citizenry via the Russian Constitution,[97] the ECHR,[98] and the ICCPR,[99] with the necessary

[91] Российская Федерация, Constitution, Article 55.3.

[92] ECHR, Article 10.2.

[93] ICCPR, Article 19.3.

[94] Nowak, Manfred. U.N. Covenant on Civil and Political Rights: CCPR Commentary 320. Kehl and Arlington, VA: N.P. Engel, 2005, 410.

[95] Per Translegal.com, a Latin term, defined as "with those things having been changed which need to be changed".

[96] *Vogt v. Germany.* 323 Eur. Ct. H.R. (ser. A) at 25 (ECHR, 1995). The applicant taught at the secondary school level in Germany and was appointed tenure for life, but was subsequently fired for personal political views.

[97] Российская Федерация, Constitution, Article 30.1.

[98] ECHR, Article 11.1.

[99] ICCPR, Article 22.1.

limitations as mentioned above in the Russian Constitution,[100] the ECHR,[101] and the ICCPR.[102] Although absent from most international human rights adjudication, except for in the case of trade unions, the ECtHR is consistent when addressing issues of a belligerent majority which is attempting to impose its will on a less-favored minority. In 1981 the Court held that:

> [P]luralism, tolerance, and broadmindedness are hallmarks of a "democratic society." Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.[103]

The argument for unconstitutionality of the 1997 Russian Law appears to be apparent, as it contradicts the Russian Constitution and international precedence on multiple levels.

Chief Proponents and Their Rationale

The principal proponents of the 1997 Law in Russia were the Russian Orthodox Church, extreme nationalists, and communists. Particularly, the Church began to argue for legislation and protection from the State in order to thwart the influx of new religions onto perceived Orthodox territory, as has been

[100] Российская Федерация, Constitution, Article 55.3.

[101] ECHR, Article 11.2.

[102] ICCPR, Article 22.1.

[103] *Young, James and Webster v. United Kingdom.* 44 Eur. Ct. H.R. (ser. A) at 25 (ECHR, 1981). Three applicants working for British Rail were fired because the refused to joined a designated labor union.

aforementioned. These activities from foreign religions and evangelical missionaries considered Russia as virgin territory after the collapse of the Soviet Union and the failure of scientific atheism. The foreign missionaries began arriving in large numbers with considerable financial resources. Secondarily, to the Orthodox hierarchy, these outsiders were considered to be cults from the perspective of the Church hierarchy, and consequently, exceptionally dangerous to the fabric of Russian society. In a pronouncement from the Council of Bishops, first recorded in Pravoslavnaya Moskva No. 7, the proclamation is clear:

> We express our concern in connection with the continuing proselytizing activity of protestant false missionaries in Russia and other countries of the CIS . . . The council is deeply concerned by the growth of organized pseudo-Christian and pseudo-religious sects, of neo-pagan communities, occultists and devil worshippers . . . The council is extremely troubled by the anti-Orthodox campaign which is being waged by the followers of these pseudo-religious organizations and their protectors . . . [T]he leaders of these totalitarian sects are in fact depriving their followers of these rights [of freedom of conscience] and reacting aggressively to any criticism of their activity. Those who attempt to oppose them are subjected to cruel persecution by the sect leaders and their highly-placed protectors, including intimidation, psychological pressure, the gathering of incriminating information, slander and repeated searches of their property.[104]

This ideology is exemplified in the mutual State and Church perspective towards the Jehovah's Witnesses. This religious body continues to struggle with registration obstacles, based upon doctrine of refusing the authority of the State. Because of such beliefs and non-compliance with State regulations, a recent

[104] Gunn, T. Jeremy. "Caesar's Sword: The 1997 Law of the Russian Federation on the Freedom of Conscience and Religious Associations." *Emory Int'l L. Rev. 43*, 1998, 88-89.

shipment of religious books and literature was seized at the border by customs' officials.[105]

The Church had petitioned for similar legislation to the 1997 Law in the early 1990s, but it was ultimately rejected as unnecessary by Yeltsin. Passage of a similar law was accomplished during the constitutional crisis of 1993 and signed by acting President Aleksandr Rutskoy, but later annulled after Boris Yeltsin regained presidential power.

Patriarch Aleksey II asserted that the Russian law should recognize "'our own traditions and history' . . . and that proselytizing should be banned because it attempts to 'entice people who profess the religion of their ancestors into a different faith.'"[106] The Church has the right to control its territory; however, the evidence suggests that sanctioning from the State via the authority of legislation affords a bias in a proclaimed secular state.

In a country frequently charged with violations concerning human rights, Patriarch Aleksey II summoned upon ideas of human rights to defend the Church position. He stated that:

> In seeking to limit this incursion of missionary activity we are often accused of violating the right to freedom of conscience and the restriction of individual rights. But freedom does not mean general license . . . [T]he aggressive imposition by foreign missionaries of views and principles which come from a religious and cultural environment which is strange to us, is in fact a violation of both religious and civil rights.[107]

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[105] Jehovah's Witnesses. 2016. "Russian Customs Officials Seize Shipments of Bibles and Bible Literature." *Jehovah's Witnesses.* January 14. https://www.jw.org/en/news/legal/by-region/russia/censorship-russian-bibles-literature/.

[106] Gunn, "Caesar's Sword," 89.

[107] Ibid.

Contrary to the Patriarch's rhetoric, the 1997 Law does not contain language or provisions which address any of the charged accusations on foreign religious institutions. The 1997 Law does, though, require a strict fifteen year mandate of existence within Russia on all religious 'organizations'.[108]

In fact, Gunn argues that "the true purpose of the law was to undercut the status of pre-existing religious associations, to undercut missionary activities, to restrict dissemination of information about religion, and to buttress the activities of the Russian Orthodox Church."[109] Thus, the 1997 Law lacks a legitimate rationale for its existence and in reality, acts as a pretext to discriminate via the mechanisms of bias.

Reactions by Prominent Scholars

Many leaders throughout the world and Russia have expressed outrage over the inexplicable nature of this law. Lawrence Uzzell, a well-respected representative from the Keston Institute stated that "This [law] would be the greatest legislative setback for human rights since the Soviet era"[110] and Vladimir Ryakhovsky, president of the Christian Legal Center in Moscow, stated that "This is interference by the state into the affairs of religious organizations."[111] Lastly, a

[108] 1997 Law, Article 9.1.

[109] Gunn, Caesar's Sword, 91.

[110] Robinson, B. A. "Religious Intolerance & Oppression in Russia: a 1997 Law Restricting Freedom." *Ontario Consultants on Religious Tolerance.* May 11, 2007. www.religioustolerance.org/rt_russi1.htm.

[111] Ibid.

minister of Moscow's Evangelical Christian Church, Vladimir Zinchenko stated that "with this law signed, you can't really speak about Russia as a democratic country. If there is no freedom of conscience, that means there is no democracy."[112] These are but a few of the many negative statements about the 1997 Law from within Russia and abroad in the international human rights and religious spheres. Yet, the Russian Constitution does not grant individual citizens the right to directly petition the Constitutional Court via case law in order to challenge a federal law.[113] In sum, "the thrust of the law exhibited blatant favoritism of the Orthodox Church, [while] it reinforced the impression that religious protectionism rather than permissible concerns such as public safety, health, constitution order, or rights of other people, was the primary motivation for restricting religious liberty."[114]

Conversely, positive reactions, including from the Church, were not surprising. Father Vsevolod Chaplin offered a red herring, as he stated the Church would "suffer a 'violation of its rights' if smaller sects were given equal status to it," conflating the situation to drug trafficking with fast religions.[115] Former Patriarch Aleksey II steadfastly asserted that "We [the State] must completely ban proselytizing. It is an attempt by unworthy means to lure people to another faith from the religion of their ancestors."[116]

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[112] Ibid.

[113] Российская Федерация, Constitution, Article 125.1-7.

[114] Lekhel, Arina. "Leveling the Playing Field for Religious "Liberty" in Russia: A Critical Analysis of the 1997 Law "On Freedom of Conscience and Religious Associations"." *32 Vand. J. Transnat'l L. 167*, January 1999, 199.

[115] Robinson

[116] Ibid.

The 1997 Law creates a constitutionally contradictory, two-tiered religious environment within the Russian Federation. It legally enshrines religious 'organizations,' but in reality, elevates Russian Orthodoxy to a favored position as the premier religion with status and benefits. It ultimately excludes legal protections of other religious entities, based upon claims of pseudo non-existence and illegal operations within the country by the administration via severe restrictions on their activities.

Russian Legal Case Law

The 1997 Law is being used to promote a historical and traditional existence of the Church to deny the very aspects of religious worship and activities to non-Orthodox institutions. Yet, international human rights law presupposes that states — whether or not a democracy or governed by authoritarianism — should not employ political power to infringe on universally recognized rights. However, the 1997 Law does not parallel the predominant understanding of established international human rights law.

There have been a few legal cases by the Russian Constitutional Court which offered holdings that should have subsequently held that the entire 1997 Law was unconstitutional. However, they did not. These cases included the Jehovah's Witnesses and Christian Church of Praise Case of November 23, 1999, and the

Jesuit Case of April 13, 2000.[117] In the first case, Article 27.3 annulled the requirement for the religious entity to have existed in the country for at least 15 years prior to the 1997, for they already had registrations and could not have their re-registrations denied because of a later law. In essence, the Court ruled that Article 9.1 "provides an alternative to Article 27." In the latter case, the "foreignness" of the body came into question under Articles 8.3 and 8.4. Again, the Court ruled in favor of already possessed registration and forbade stripping of rights already possessed for years.

One of the latest manifestations of these legal case laws in Russia involves the Moscow Branch of the Salvation Army Case of February 7, 2002, where failure to re-register would result in liquidation of all assets.[118] The Salvation Army claimed that it couldn't maneuver the plethora of obstacles for timely registration and failed to meet the deadline; thus, was subsequently ordered to liquidate. Thomas states that "the Court simply ruled that a religious organization registered in Russian before 1997 could not be liquidated for failing to jump unnecessary bureaucratic hurdles."[119] The Constitutional Court narrowly held that these decisions are only applicable to religious institutions that were present and registered within the country prior to 1997; thus, declaring the 1997 Law constitutional as a whole.

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[117] Thomas, Marina. "Russian Federation Constitutional Court Decisions on Russia's 1997 Law "On Freedom of Conscience and Religious Associations"." *The International Journal of Not-for-Profit Law* 6, no. 1 (September 2003): 1-10.

[118] Ibid.

[119] Ibid.

However, the Russian Constitutional Court has written much about their decisions. It defers to the State, as:

> The government has the right to put certain limits on registration, so that the status of a religious organization is not received by any religious association automatically, for the purposes of prevention of legalization of sects that infringe upon human rights and carry out illegal and criminal activities [and] for the purposes of limiting missionary activities (proselytism issue) if they are not compatible with the respect for the freedom of thought, conscience, and religion of others (e.g. accompanies by offering material and social benefits in order to recruit new members, usage of the illegal means of persuasion . . . psychological pressure, threat of violence, etc.).[120]

However, this deference is incompatible with ECtHR case law that directly relates to religious associations in Russia.

There are four recent individual ECtHR cases that are relevant to the thesis of this paper and specifically address Russia. They include: (1) the *Nolan and K v. Russia* case,[121] where the ECtHR held that Russia violated freedom of religion tenets with the expulsion of an American missionary of the Unification Church, based upon national security concerns; (2) the *Kimlya and Others v. Russia* case,[122] where the ECtHR ruled 'against' the Churches of Scientology in Surgut and Nizhnekamsk on their demand for reregistration as a religious association; (3) the *Jehovah's Witnesses of Moscow and Others v. Russia* case,[123] where the ECtHR held against Russia, for violating the rights of Kingdom Hall members over complaints of excessive dues, forced literature reading, denial of blood

[120] Ibid.

[121] *Nolan and K. v. Russia.* 2009. 2512/04 (ECtHR, February 12).

[122] *Kimlya and Others v. Russia.* 2009. 76836/01 and 32782/03 (ECtHR, October 1).

[123] *Jehovah's Witnesses of Moscow and Others v. Russia.* 2010. 302/02 (ECtHR, November 11).

transfusions, proselytizing, and more; and (4) the *Krupko and Others v. Russia* case,[124] where again, the ECtHR ruled against Russia for utilizing riot police to raid a religious service in progress and detain the religious congregants. In all, the ECtHR has been exceptionally favorable to the established right to freedom of religion except for the one inadmissibility case on technical issues and simultaneously, while being quite unyielding in their resolve against Russia and the 1997 Law.

In disagreement of the 1997 Law, Joseph Brossart comments on the legislation, as it "violates the letter and the spirit of the Constitution."[125] He continues by asserting that every legal system is "a synthesis of universal notions of rights with concrete historical conditions and commitments." He posits that the Russian Constitutional Court is partly influenced by "historical and cultural norms" and cannot rule on the overall and pressing question of constitutionality.

In sum, the holdings for the 1997 Law are presently constitutional in the opinions of the Russian Constitutional Court, sanctioned by the State and the Church in the form of Caesaropapism (the State takes over functions of the supreme religious order) and *symphonia* (an arrangement originating in the Byzantine era in the sixth century, when church and state equally shared power), [126] and simultaneously, are incompatible with the holdings from the ECtHR.

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[124] *Krupko and Others v. Russia.* 2014. 26587/07 (ECtHR, November 17).

[125] Thomas.

[126] Papkova, Irina. *The Orthodox Church and Russian Politics.* Edited by Woodrow Wilson International Center for Scholars. New York: Oxford University Press, Inc., 2011: 7.

Unconstitutional Exclusive Benefits to the Church

There are two prominent benefits afforded to the Church from the State that are not based upon the letter of the 1997 Law, but upon the spirit of the law. These benefits are allocated exclusively to the Church; meaning, no other religious entity, association, 'organization,' or 'group' has these rewards.

Firstly, the Patriarch of Holy Russia and All Moscow, Kirill II, has moved his official residence into the Kremlin Patriarchal chambers, located on the ground floor of the Granovitaya Palata.[127] Archpriest Vladimir Vigilyansky stated, "His Holiness the Patriarch will conduct various meetings in the new residence . . . [and] he will meet with the country's leaders there."[128] This begs the question as to why the need for such a move was warranted, if not for direct access to State officials, considering that the Danilov Monastery is the official home of the Church and proclaimed residence of the Patriarch, and is located approximately twenty minutes to the south of the Kremlin.[129]

Secondly, and most prominently, the State has agreed to show and consult with the Church on all legislative work in the future. A meeting was held between

[127] NFTU. 2011. "Patriarch Kirill to Make Kremlin Official Residence." *NFTU: True Orthodox and Ecumenical News.* November 23. http://nftu.net/patriarch-kirill-to-make-kremlin-official-residence/.

[128] Interfax-Religion. 2011. "Patriarch Kirill to Hold Some Meetings in the Moscow Kremlin." *Interfax-Religion.* November 22. http://www.interfax-religion.com/?act=news&div=8898.

[129] Русская Православная Церковь. 2016. *Данилов Монавтырь.* msdm.ru

Patriarch Kirill I and two United Russia[130] deputies to agree to this tenet,[131] just prior to Russia's agreement to proceed with ratification of the European Social Contract.[132] United Russia Deputy Andrei Isayev told the Patriarch that, in the future, the Party "would show the patriarchate the State Duma's plan for legislative work and hold preliminary consultations on all questions that may raise doubts to avoid mutual misunderstanding,"[133] which certainly provides the rationale for the need to have the Patriarch in close proximity to the governing bodies.

Simultaneously, various bodies within the Church were created to specifically interact with the State and approve legislation. The Church established a department for church-state relations which engages in relationships with "legislative bodies, political parties, trade unions . . . and other institutes of the civil society in the canonical territory of the Moscow Patriarchate."[134] [135] Blitt asserts that "from the perspective of the Church, the situation is ideal: its independent authority and decision making capacity are preserved intact, and not co-opted by the government as under a formal, more unified system of state religion. Yet at the

[130]Единая Россия. 2016. *Единая Россия: Официальный Сайт Партии.* er.ru. (Political Party of Russian President Vladimir Putin).

[131] Blitt, Robert C. "One New President, One New Patriarch, and a Generous Disregard for the Constitution: A Recipe for the Continuing Decline of Secular Russia." *43 Vand J. Transnat'l L. 1337*, 2010: 1363.

[132] Council of Europe. 2016. "European Social Charter." *Council of Europe.* http:www.coe.int/en/web/turin-european-social-charter/about-the-charter.

[133] Blitt, "One New President," 1364.

[134] Ibid., 1365.

[135] Русская Православная Церковь. 2016. "Background." *The Russian Orthodox Church: Department for External Church Relations of the Moscow Patriarchate.* https://mospat.ru/en/department/history/.

same time, the Church is able to assert a significant influence on the policy making process, not only without regard for Russia's Constitution, but at the expense of all other religious groups in Russia."[136] Ironically, a federal advisory board created under federal law for the singular purpose of reviewing draft legislation, "has been prevented from performing this task since its establishment in 2005."[137] [138]

Evidence from Former Patriarch Alexey II provides the disturbing rationale behind these decisions. Alexey II stated that, "I remember in 2004 a meeting between the President of the Russian Federation and the Council of Bishops of the Russian Orthodox Church which was then taking place. Vladimir Putin said at the time that gradually *the government is paying back its debts to the Church* [my emphasis]."[139]

Thus, the evidence strongly suggests that although the actual verbiage of the 1997 Law did not provide specific benefits for the Church, it was a pivotal moment when rapprochement between the State and Church began, upon which forthcoming decisions could be formulated in spirit.

[136] Blitt, "One New President," 1365.

[137] Ibid., 1364.

[138] Российкая Федерация. "Федеральный закон от 04.04.2005 N 32-ФЗ (редю от 28.11.2015) "Об Общественной Российкой Федерации." *КонсультантПлюс.* April 4, 2005. http://consultant.ru/document/cons_doc_LAW_52651/.

[139] Русская Православная Церковь. 2008. "'Church, Society, and Politics: View from Moscow.' An Article by His Holiness Patriarch Alexy in a Special Issue of 'European View' Dedicated to Religion and Politics." *Russian Orthodox Church: Department of External Affairs.* February 27. http://mospat.ru/archive/en/2008/02/39896/.

CHAPTER III:

THE MANIFESTATION OF THE CHURCH/STATE ALLIANCE

The previous chapter detailed the manner in which the Church garnered increased power and influence within the State structure via legislation and as a recipient of preferential bias. Yet, this accomplishment would be for naught, if not for an avenue in which to manifest this newly afforded power. An important and pivotal moment in the history of the Church and State interrelationship was the passage and implementation of the 2013 law *On the Protection of Children from Information Liable to be Injurious to Their Health and Development* [hereafter 'Gay Propaganda' Law].[140] This is a single law, which collectively amends three separate federal laws. The Church and the State aligned together to address the perceived threat on the future survival of the nation-state, to mandate the majority stance of heteronormativity across all demographics, and to champion the cause of rebuking Western modernity.[141] Regardless of the fact that Russia decriminalized homosexuality in 1993, and depathologised it in conjunction with the World Health Organization's International Classification of Diseases in 1999,[142] the 'Gay

[140] Российская Федерация. «Федеральный закон от 29.06.2013 N 135-ФЗ "О внесении изменений в статью 5 Федерального закона "О защите детей от информации, причиняющей вред их здоровью и развитию" и отдельные законодательные акты Российской Федерации в целях защиты детей от информации, пропагандирующей отрицание традиционных семейных ценностей.» *КонсультантПлюс.* 29 июнь 2013 г. http://www.consultant.ru/document/cons_doc_LAW_148269/.

[141] Persson, Emil. "Banning "Homosexual Propaganda": Belonging and Visibility in Contemporary Russian Media." *Sexuality & Culture* 19 (2015): 270.

[142] Kondakov, Alexander. "The Silenced Citizens of Russia: Exclusion of Non-heterosexual Subjects from Rights-Based Citizenship." *Social & Legal Studies* 23, no. 2 (2014): 161.

Propaganda' Law was seen as the appropriate legislative measure to implement as the country was perceived as being under attack from all things Western, particularly from Western morals and values, which were diluting and destroying Russian society. Even as President Vladimir Putin made statements concerning the absence of any type of infringement on the rights of sexual minorities,[143] the vaguely written law "effectively prevents the LGBT[QIA] community from organizing [and protesting] in public events" and mandates their return to the self-imposed imprisonment of the closet.[144] Elena Klimova, founder of "Children – 404," an online referral service to queer teenagers and later charged with violating this law, stated that "the law against gay propaganda legitimized violence against LGBT[QIA] people, and they now are banning street actions under it. . . . People are afraid because they understand that gay propaganda is banned, and even mentioning LGBT[QIA] relations is essentially forbidden."[145]

However, a detailed examination of the law in question, along with its specific details and verbiage, is required at this moment before an accurate and thorough analysis of the ramifications from the 'Gay Propaganda' Law can be ascertained.

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[143] Rose, Scott. "Putin Signs Law Banning Gay 'Propaganda' Among Children." *Bloomberg.* June 30, 2013. http://www.bloomberg.com/news/articles/2013-06-30/putin-signs-law-banning-gay-propaganda-among-children.

[144] Sperling, Valerie. *Sex, Politics, and Putin.* New York: Oxford University Press, 2015: 235.

[145] Luhn, Alec. "LGBT Website Founder Fined under Russia's Gay Propaganda Laws." *The Guardian.* July 29, 2015. http://www.theguardian.com/world/2015/jul/29/lgbt-yelena-klimova-fined-russia-gay-propaganda-laws.

Specificities of the 'Gay Propaganda' Law

The 'Gay Propaganda' Law amends various articles in three different federal laws, including in: (1) the 1998 law on principal guarantees of children's rights,[146] (2) the 2001 Legal Code,[147] and (3) the 2010 law for the protection of children.[148] The law, in and of itself, is not lengthy, but powerful in rhetoric and suggests an appeasement to Church influence. If enforced exactly as written, it is a prolific example of the manifestation of Church and State collaboration within Russia. Thus, as the ramifications of this law are forthcoming, the elucidation of the articles in the law are now required.

There are five articles in this law, with Articles 4 and 5 only serving administrative and logistical functions. The three primary articles of the 'Gay Propaganda' Law include:

1. Article 1, which clarifies the type of values which is being addressed, as values "promoting non-traditional sexual values."[149] Article 1 amends the 2010 law for the protection of children,[150] by

[146] Российская Федерация. «Федеральный закон от 24.07.1998 N 124-ФЗ (ред. от 28.11.2015) "Об основных гарантиях прав ребенка в Российской Федерации".» *КонсультантПлюс.* 24 июль 1998 г. http://www.consultant.ru/document/cons_doc_LAW_19558/.

[147] Российская Федерация. «"Кодекс Российской Федерации об административных правонарушениях" от 30.12.2001 N 195-ФЗ (ред. от 05.04.2016).» *КонсультантПлюс.* 30 дек 2001 г. https://www.consultant.ru/document/cons_doc_LAW_34661/.

[148] Российская Федерация. «Федеральный закон от 29.12.2010 N 436-ФЗ (ред. от 29.06.2015) "О защите детей от информации, причиняющей вред их здоровью и развитию".» *КонсультантПлюс.* 29 дек 2010 г. http://www.consultant.ru/document/cons_doc_LAW_108808/.

[149] 'Gay Propaganda' Law, Article 1.

[150] Российская Федерация, 2010 Children's Law, N 436-ФЗ Article 5.2.4.

inserting new text into the article as shown in bold print. The article declares:

> *отрицающая семейные ценности,* ***пропагандирующая нетрадиционные сексуальные отношения*** *и формирующая неуважение к родителям и (или) другим членам семьи,*
>
> denying family **values that promotes unconventional sexual relationships** and forming disrespect to parents and (or) other family members.

2. Article 2, which clarifies similar components as Article 1, by amending the 1998 law on principle guarantees of children's rights,[151] by inserting "from information promoting non-traditional sexual relations."[152] The article declares, with the new text in bold print:

> *Органы государственной власти Российской Федерации принимают меры по защите ребенка от информации, пропаганды и агитации, наносящих вред его здоровью, нравственному и духовному развитию, в том числе от национальной, классовой, социальной нетерпимости, от рекламы алкогольной продукции и табачных изделий, от пропаганды социального, расового, национального и религиозного неравенства, от информации порнографического характера,* ***от информации, пропагандирующей нетрадиционные сексуальные отношения,*** *а также от распространения печатной продукции, аудио- и видеопродукции, пропагандирующей насилие и жестокость, наркоманию, токсикоманию, антиобщественное поведение,*
>
> The state authorities of the Russian Federation take measures to protect children from information, propaganda and agitation harmful to his health, moral and spiritual

[151] Российская Федерация, 1998 Rights of Children Law, N 124-ФЗ Article 1.14.

[152] 'Gay Propaganda' Law, Article 2.

development, including: from national, class, social intolerance; from advertising of alcoholic products and tobacco products; from the propaganda of social, racial, ethnic and religious inequalities; from information of pornographic characteristics; **from the information that promotes non-traditional sexual relationships;** as well as from the dissemination of printed materials, audio- and video products that promote violence and cruelty, drug addiction, substance abuse, antisocial behavior.

3. Article 3 of the 'Gay Propaganda' law,[153] amends a plethora of articles and statues in the Legal Code of the Russian Federation, most notably in Article 6.21 by providing a list of specific activities which are prohibited,[154] and divided between offenders with or without Russian citizenship. However, this list is not fully enumerated.

a. **Section 6.21.1** (key words in bold print)**.** As translated into English, it proclaims the definition of violations and establishes fine amounts/punishments **(for Russian citizens only):**

> **Promoting** non-traditional sexual relations to minors by **spreading** information aimed at **instilling** in minors non-traditional sexual arrangements, the **attractiveness** of non-traditional sexual relations and/or a **distorted view** that society places an **equal value** on traditional and non-traditional sexual relations or **propagating** information on non-traditional sexual relations making them appear **interesting,** provided that these activities do not involve criminal acts which are punishable under the law, will be punishable by the imposition of a **fine**

[153] 'Gay Propaganda' Law, Article 3.

[154] Российская Федерация, Legal Code, Article 6.21.

ranging from four thousand to five thousand rubles for individuals, from forty thousand to fifty thousand rubles for officials, from eight hundred thousand to one million rubles or suspension of operations for up to ninety days for legal entities,

b. **Section 6.21.2** (key words in bold print). As translated into English, it proclaims a special type of violation with increased fine/punishment amounts **(for Russian citizens only):**

> Activities stipulated in section 1 of the present article carried out using the **mass media** and/or **information-telecommunications channels (including the internet)** provided that these activities do not involved criminal acts which are punishable under the law, will be punishable by the imposition of a **fine ranging from** fifty thousand to one hundred thousand rubles for individuals, from one hundred thousand to two hundred thousand rubles for officials, and one million rubles or suspension of operations for up to ninety days for legal entities.

c. Section 6.21.3 (key words in bold print). As translated into English, it proclaims the definition of violations and establishes fine/punishment amounts (**for non-Russian citizens):**

> Activities stipulated in section 1 of the present articles carried out by foreigners or stateless persons provided that these activities do not involve criminal acts which are punishable under the law, will be punishable by the imposition of a **fine ranging from** four thousand to five thousand rubles **plus deportation** from the Russian Federation **or detention** for up to fifty days **plus deportation** from the Russian Federation,

d. **Section 6.21.4** (key words in bold print). As translated into English, it proclaims a special type of violation with increased fine/punishment amounts (**for non-Russian citizens):**

> Activities stipulated in section 1 of the present article carried out by foreigners or stateless persons using the **mass media** and/or **information-telecommunications channels (including the internet)** provided that these activities do not involve criminal acts which are punishable under the law, will be punishable by the imposition of a **fine ranging from** fifty thousand to one hundred thousand rubles **plus deportation** from the Russian Federation **or detention** for up to fifty days **plus deportation** from the Russian Federation.

Thus, as written, the 'Gay Propaganda' Law seems quite innocuous and benign: however, the power resides in interpretation, as a full enumeration of specific activities that would be deemed illegal is absent.

Ramifications, Rationale, and Reactions

The manifestation of accumulated power between the Church and State is evidenced in the verbiage and interpretation of this law. However, the elucidation of the practical applications of the law is required in order to fully envision its severity. In addition to these depictions of violations, the rationale from the Church and its leaders are paramount, as well as public opinion. Admittedly, "[a] weapon is either offensive or defensive according to which end of it you are looking at,"[155]

[155] Jervis, Robert. "Cooperation Under the Security Dilemma." *World Politics* (Cambridge University Press) 30, no. 2 (Jan. 1978): 201.

so it is with caution, yet paramount, to elucidate the full range of complexities and perspectives from a wide range of legitimate sources.

The 'Gay Propaganda' Law is so vaguely written that specific violations are left up to the discretion of the local authorities. The populace was asked in 2015, which activities could fall under the jurisdiction of this law.[156] The polling data revealed some interesting statistics. For each of the following activities, the recorded figure reflects the percentage of respondents that answered 'probably yes' or 'definitely yes':

- 80% - talk shows, television programs, articles on the lifestyles of sexual minorities
- 58% - personal communications with representatives of sexual minorities
- 67% - educational programs about the nature of homosexuality.
- 84% - meetings and rallies in defense of the rights of sexual minorities
- 79% - books and movies about same-sex relationships were violations.
- 87% - gay pride parades
- 81% - upbringing of a child with both parents being the same gender
- 85% - public displays of affections between homosexuals

Thus, with such high percentages that reflect the overall opinion of the public, it is easy to conclude that public officials' actions are representative of their constituents and warrant a close alliance with the Church.

However, the accused violators of the 'Gay Propaganda' Law would virulently disagree. Dmitry Isakov, age 24, from Kazan, was the first to be charged for violating this law. His crime was holding a sign in protest, which read, "To be

[156] Левада-Центр. *Левада-Центр аналитический центр Юрия Левады.* 2016. http://www.levada.ru/., "Homophobia" 6.10.2015 - All of the surveys included in this paper recorded a margin of error between ± 3.5-5% and polled 1600 persons each, at a minimum.

gay and to love gays – is normal; to beat gays and to kill gays – is criminal."[157] Elena Klimova, founder of the online website, "Children – 404," was charged for referring teenagers who were struggling with their sexual minority identification to appropriate and non-judgmental counselors and advocates.[158] She stated that "I fear that either there will be a judge who is not competent in this matter, or else there will be a signal from up high saying 'this person must be found guilty,'" a reference to the 'telephone' laws in the Soviet Union when high ranking officials would mandate the preferred verdict to the lower-ranking judiciary before the trial had begun. One of the most famous of all gay rights activists in Russia, Nikolai Alexeyev, better known for his legal case in the ECtHR which challenged the ban on Moscow gay pride parades,[159] was arrested, alongside fellow activist Yaroslav Yevtushenko, outside a library in Arkhangelsk for holding a banner that read "Gay propaganda does not exist. People do not become gay, people are born gay."[160] A newspaper editor (name unknown) was charged and fined in Khabarovsk for running a positive article about Aleksandr Yermoshkin, who had been assaulted and forced to resign from his place of employment because of his admitted non-traditional sexuality.[161] And the list proceeds indefinitely.

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[157] Day, Aaron. "Russia: First Person to be Convicted under Anti-Gay 'Propaganda' Law Arrested by His Own Parents." *Pink News.* September 13, 2013. http://www.pinknews.co.uk/2013/09/02/russia-first-person-to-be-convicted-under-anti-gay-propaganda-law-arrested-by-his-own-parents/.

[158] Luhn, Alec. "LGBT Website Founder Fined under Russia's Gay Propaganda Laws." *The Guardian.* July 29, 2015. http://www.theguardian.com/world/2015/jul/29/lgbt-yelena-klimova-fined-russia-gay-propaganda-laws.

[159] *Alekseyev v. Russia.* Applications nos. 4916/07, 25924/08 and 14599/09 (ECtHR, 2010).

[160] Luhn.

[161] Ibid.

However, the official stance from the Church is the foundation from which all of these public opinions seemingly derive. In a document entitled the *Basic Teaching on Human Dignity, Freedom and Rights,* the Church proclaims:

> the rights of an individual should not be destructive for the unique way of life and traditions of the family and for various religious, national and social communities . . . [as] unity and inter-connection between civil and political, economic and social, individual and collective human rights can promote a harmonious order of societal life both on the national and international level. The social value and effectiveness of the entire human rights system depend on the extent to which it helps to create conditions for personal growth in the God-given dignity and relates to the responsibility of a person for his actions before God and his neighbors.[162]

Additionally, "[t]he Church calls upon people to restrain their egoistic desires for the sake of the common good,"[163] "[h]uman rights should not contradict love for one's homeland and neighbors,"[164] "[t]he development and implementation of the human rights concept should be harmonized with the norms of morality, with the ethnical principle laid down by God in human nature and discernable in the voice of conscience,"[165] [h]uman rights cannot be superior to the values of the spiritual world,"[166] and,

> The weakness of the human rights institution lies in the fact that while defending the freedom of choice, it tends to increasingly ignore the moral dimension of life and the freedom from sin. The social system should be guided by both freedoms, harmonizing their exercise in the public sphere. One of these freedoms cannot be defended while the other is neglected. Free adherence to goodness and the truth is impossible without the freedom

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[162] Русская Православная Церковь. *Отдел Внешних Церковных Связей.* 2016. https://mospat.ru/en/documents/dignity-freedom-rights, Article IV Paragraph 9.

[163] Ibid., Article IV.7

[164] Ibid., Article III.4.

[165] Ibid., Article III.3.

[166] Ibid., Article III.2.

> of choice, just as a free choice loses its value and meaning if it is made in favor of evil.[167]

Likewise, in the *Social Concept* document of the Church where intersectionality of Church and State is publically acknowledged by proclaiming the unity of the "universal with the national," little ambiguity remains concerning the intentions of the Church and how might they use this power and influence.[168] These official ecclesiastical declarations are significantly clear to convey the perspective of the Church on human rights and the intersectionality of societal morality and the role of government.

Subsequently, the personal views of Kirill I, the current Patriarch of Moscow and All Russia, heightens the intensity of these perspectives. He stated, that "Tradition is not something outmoded, unwieldy, cumbersome and basically useless. Tradition is the main conduit facilitating the transmission of values between generations. The attempts to raze everything to the ground – including the destruction of tradition – and then build a new world upon the debris usually lead to nothing good and brings a nation right to the threshold of spiritual catastrophe."[169] He also has been quoted, by declaring that the arrival of current Russian President Vladimir Putin is a "miracle of God."[170] He later became more

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[167] Ibid., Article II.2, Section 3.

[168] Русская Православная Церковь. *Отдет Внешних Церковных Связей.* 2016. http://mospat.ru/en/documents/social-concepts, Article II.

[169] Torbakov, Igor. "The Russian Orthodox Church and Contestations over History in Contemporary Russia." *Demokratizatsiya: The Journal of Post-Soviet Democratization*, 2013: 154.

[170] Woods, Mark. "How the Russian Orthodox Church is Backing Vladimir Putin's New World Order." *Christian Today.* March 3, 2016. http://www.christiantoday.com/article/how.the.russian.orthodox.church.is.backing.vladimir.putins.new.world.order/81108.htm.

adamant by declaring, "We are seeing how efforts are being made in many prosperous countries to establish by law the person's right to any choice, including the most sinful ones, those that contradict god's word, the concept of holiness, the concept of god. . . . today we are [dealing with] a global heresy of worshipping the human, the new idolatry that removes god from human life."[171] Thus, from the selected quotations of rhetoric from Patriarch Kirill I, based upon the foundation of official Church documentation, the struggle for the heart and soul of Russia is a battle between the protection of Russian history and tradition and the unwanted influx of Western, individualistic morality.

As an examination of official Church rhetoric is crucial for a thorough examination of this imbroglio, the perspective from the current political regime, including from current President Vladimir Putin, is likewise critical, for an all-encompassing understanding of this unique interrelationship. Putin declared that "[a] policy is being conducted of putting on the same level multi-child families and single-sex partnerships, belief in God and belief in Satan. The excesses of political correctness are leading to the point where people are talking seriously about registering parties whose goal is legalizing the propaganda of paedophilia;"[172] and concerning the foreign athletes at the Sochi Olympic Games, he reassured them and the world that they [LGBTQIA] were welcome as long as they would "stay away

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[171] Dolgov, Anna. "Russia's Patriarch Kirill: Some Human Rights are 'Heresy'." *The Moscow Times.* March 21, 2016. http://www.themoscowtimes.com/news/article/russias-patriarch-kirill-some-human-rights-are-heresy/563065.html.

[172] Buckley, Neil. "Putin Urges Russians to Return to Values of Religion." *Financial Times*, September 2013, (paedophilia is an alternative spelling of pedophilia).

from the children."[173] The idea of conflating homosexuality to pedophilia is not a novel idea in regions that are striving to maintain traditional conservative values; nonetheless, it is a red herring. He has also maintained that "[t]he revival of the Church's unity is a crucial precondition for restoring the unity of the entire Russian world, which has always seen Orthodoxy as its spiritual foundation."[174]

Subsequently, there have been many scholars and professionals who have articulated the significance of the Church and State interrelationship in modern Russia. "The constitutional separation of church from state has not prevented the Orthodox Church from arrogating to itself some of the characteristics of an established church. It has been able to do this, first, simply through the association of Orthodoxy with Russian culture," [175] writes Michael Waller, a Professor Emeritus of politics and international relations. Karina Pipiya, a sociologist from Levada Center stated that, "The authorities are constantly articulating the important role of Orthodoxy as one of the components of 'special national identity,' in contrast with Western values and patterns, and people willingly support this idea."[176] In 2015, the citizenry was surveyed about whether or not their value system and self-identity aligned with Western culture, with 91% responding by stating that Western culture was not important or absolutely does not align with

[173] Sperling, 299.

[174] Blitt, "How to Entrench a De Facto State Church in Russia: A Guide in Progress", 707.

[175] Waller, Michael. *Russian Politics Today: The Return of a Tradition.* Editor Bill Jones. New York: Manchester University Press, 2005, 239.

[176] Woods.

them,[177] which is slightly highly than the percentages from 1993. Likewise, when asked about faith and belief from 1991 to the present, the percentages confirm a 'special national identity' component versus the assumed religiously divine characteristic of Orthodoxy. The following percentages are significantly lower than the 80% of self-identified Orthodox believers nationwide: (1) only 47% often or always hope and pray to God versus 25% percent in 1991; (2) a meager 37% believe in religious miracles, down from 49% ; (3) life after death garnered 40% for belief, again down from 51%; (4) barely half at 45% do not believe in the devil, down from 57%; and, (5) 43% do not believe in the existence of hell, down from 56% in 1991.[178] When questioned about the frequency of church attendance, only 2% in 1991 responded that they attend church at least monthly, compared to a meager increase to 7% in 2008.[179] The populace was asked about the benefits of religion to society as a whole, and the recorded percentages were 61% for positive benefits in 1990, and drastically dropping to 36% in 2015. If the question was framed to benefit the individual, the percentages drop again, from 41% to 33%, respectfully.[180] When asked if they would like to live in a country where religious values play an important role in social life, or where religion is a private matter

[177] Левада-Центр, "Western Lifestyle," 10.16.2015.

[178] ВЦИОМ. *Всероссийский центр изучения общественного мнения.* 2016. http://wciom.ru/, "Time of Faith or Superstition" April 28, 2016.

[179] Pew Research. «Russians Return to Religion, But Not to Church.» *Pew Research Center.* 10 February 2014 г. http://www.pewforum.org/2014/02/10/russians-return-to-religion-but-not-to-church/.

[180] ВЦИОМ, "Religion: for or against" , No 2888, 7.26.15.

option and has no influence in social life, 65% answered affirmatively for the private matter and no influence in 2000, and down slightly to 57% in 2015.[181]

Scholars have concluded that, "[t]he glue that holds together the alliance between Vladimir Putin and the ROC, and the one that more than any other explains their mutually-supporting actions, is their shared, sacralized vision of Russian national identity and exceptionalism. Russia, according to this vision, is 'neither Western nor Asian,' but rather a unique society representing a set of values which are believed to be divinely inspired."[182] In January, 2016, 46% of the surveyed respondents answered that they would prefer a democratic system in Russia that was a "completely special kind that is appropriate to Russia's national traditions and unique characteristics," with another 19% wanting a system similar to the Soviet Union.[183] The rapprochement with the Church is merely a *'simulcra,'* or:

> the regime's last desperate attempt to legitimate its rule as all other ideological strategies have already been tried and failed . . . In Russia, millions of Russians just pretend as if they were true Orthodox believers, the Orthodox Church behaves as if it were the nation's paramount moral authority, and indisputable spiritual leader, and the Kremlin leadership treats the Church as if the latter were a powerful social institution whose help is instrumental in bringing about societal cohesion . . . For the overwhelming majority of Russians who claim they are Orthodox, the latter is just one of the markers of national and cultural identity . . . The "Orthodox ideology" acts as a substitute for a defunct communist one.[184]

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[181] ВЦИОМ, "Church and Society: Together or Apart", No 1746, 6.24.15.

[182] Coyer, Paul. «(Un)Holy Alliance: Vladimir Putin, The Russian Orthodox Church And Russian Exceptionalism.» *Forbes.* 21 May 2015 г. http://www.forbes.com/sites/paulcoyer/2015/05/21/unholy-alliance-vladimir-putin-and-the-russian-orthodox-church/.

[183] Левада-Центр, "Democracy in Today's Russia," 1.20.2016.

[184] Torbakov, 169-170.

These sentiments may appear to be harsh, but scholars and experts are forthright in their opinions of the current political and religious environment in Russia. Torbakov writes, that "[t]he Church's subservience to the state is likely going to cost it dearly in terms of moral stature and prestige. The state's ruling elites' casting of Orthodoxy as a "national religion" is counter-productive, if not outright dangerous in a multi-cultural and poly-confessional country."[185]

There is, though, one prominent scholar, Irina Papkova, who elucidates the ineffectiveness of the Church and State alliance in Russia, which stands in subtle contrast to the majority opinion of Western scholarship. Most of the scholarship, to date, emphasizes the juxtaposition between religious and cultural Orthodoxy, while she adds an additional dimension to the discourse, although with different definitional categories. She delineates the Church in Russia as an ineffective and unorganized triad, divided between traditionalist, fundamentalist, and liberal factions. In her opinion, traditionalists believe that Russia's future lies in the "spiritual renaissance of its people, a process that cannot occur without the active involvement of the Orthodox Church,"[186] and their viewpoints formed as a response to the "political, economic, and social crisis in which Russia found itself in the late 1990s after nearly a decade of liberal, Western-inspired reforms." [187] Fundamentalists, per Papkova, have a "yearning for a Golden Age, apocalyptic and eschatological expectations, a return to original texts . . . and above all innovation

[185] Ibid., 146.

[186] Papkova, 47.

[187] Ibid., 48.

in religious practice."[188] Lastly, the liberals are a hybrid of the two previous descriptions, and are decidedly more open to the concepts of "capitalism, globalization, and the West," in general.[189] This lack of cohesion prevents the Church from organizing as a powerful block, and with the exception of the 1997 Law, has been relatively ineffective, by not being able to accomplish its far-reaching goals and political agenda for the country. The environment has modified in favor of the Church with the arrival of the more conservative Patriarch Kirill I, but the premise of her three-dimensional bifurcation seamlessly aligns with the distinctions between religious and cultural Orthodoxy purported in this paper. Nonetheless, her insights are profound and worthy of further in depth exploration, as the scholarship on the causality and agenda of religious figures in the political realm are just beginning.

Intersectionality of Church and State on Societal Issues

This paper has already established the interrelationship between the functioning mechanisms of the Church and State. It is unsurprising that issues concerning the traditional family unit and non-traditional sexual relationships warrant an analogous approach, specifically concerning the formulation of the 'Gay Propaganda' law and the role of Russian Orthodoxy in society.

[188] Ibid., 61.

[189] Ibid., 53.

There is a prominent link between Elena Mizulina of the State and Archpriest Dmitri Smirnov of the Church. Mizulina,[190] [191]the chief author of the 'Gay Propaganda' Law, current Senator from the Omsk region and former Chairman of the Standing Commission on the Issues of Motherhood, Childhood and Women's Rights in the Duma from 2000-2010, works very closely with Smirnov, [192] a top Orthodox priest in Moscow and head of the Patriarchal Commission on Family Matters, Protection of Motherhood and Childhood. These two entities, one State affiliated and the other Church affiliated, work in tandem, as Smirnov stated that his "commission has worked closely with Mizulina's Duma committee on family policy" and "often advises" Mizulina, via institutional and financial links, as well as support in meetings, speeches, and policy advice.[193] He also stated that "We will try to promote informational support and a higher level of *legal* culture [my emphasis] in the sphere of family relations . . . [and] to preach in all possible ways the Christian views on the family . . . which have now been largely lost."[194]

[190] Russian News. 2015. "Elena Mizulina Officially Appointed a Senator from the Omsk Region." *Last News from Russia.* September 23. http://en-news-4-u.ru/elena-mizulina-officially-appointed-a-senator-from-the-omsk-region.html.

[191] Мизулина, Елена. 2016. *Елена Мизулина.* elenamizulina.ru.

[192] Русская Православная Церковь. 2016. *Патриашая Комиссия по Вопросам, Защиты Материнства и Детства.* http://pk-semya.ru/.

[193] Levintova, Hannah. 2014. "The World Congress of Families' Russian Network." *MotherJones.com.* http://www.motherjones.com/politics/2014/02/world-congress-families-us-evangelical-russia-family-tree.

[194] Русская Правосланая Церковь. 2013 "Website of Patriarchal Commission on Family Matters, Protection of Motherhood and Childhood Opens." *Pravoslavie.* 22 November. http://www.pravoslavie.ru/english/66084.htm.

Mizulina has been actively involved in several controversial legislative proposals, with some having successfully been legislated and implemented. She has proposed making Russian Orthodoxy the official state religion,[195] and voiced concerns about legislation equating cohabitation as equal to formal marriage.[196] Additionally, she directly addressed the need for a traditional family with increased numbers of children to alleviate the steady decline in population numbers, by stating "The family is the highest value . . . Even if you compare it with the State . . . Because if there is no family, [there is] no State!"[197]

Evidence from Elena Mizulina, herself, exhibits one of the most striking examples of Church and State intersectionality. Russian President Vladimir Putin and Patriarch Kirill I met recently at the Holy Mount Athos to mark the millennium anniversary of monasticism in Russia. Mizulina stated,

> *Я считаю этот визит очень важным для всего православного мира . . . светского и духовного . . . Это позволяет все глубже понять духовные основы российской государственности. И в очередной раз задуматься о необходимости сохранения русских традиций, о необходимости закрепления в российской Конституции положения об особой роли православия как основы национальной и культурной самобытности России.*[198]
>
> I consider this visit to be very important for all of the Orthodox world . . . secular and spiritual . . . This allows everyone to more deeply understand the spiritual foundations of Russian nationhood. And once again to reflect

[195] РБК. 2013. "Е. Мизулина Предложила Закрепить Православие в Конституции." *РБК.* November 22. http://www.rbc.ru/politics/22/11/2013/890512.shtml.

[196] Мизулина, Елена. *elenamizulina.ru.* April 4. http:elenamizulina.ru/newss/elena-mizulina-prokommentirovala-iniciativu-o-priravnivanii-sozhitelstva-k-oficialnomu-braku.html#more-2095.

[197] Ibid., 2016. "в Совете Федерации Прошёл Парламентские Слушания, Посвященные Реформированию Семейного Законодательства." *elenamizulina.ru.* March 17. http:elenamizulina.ru/?s=реформированию+семейного+законодательства.

[198] Ibid., 2016. "Елена Мизулина - о Визите Владимира Путина и Патриарха на Афон." *elenamizulina.ru.* 28 May. http://elenamizulina.ru/newss/putin_afon.html.

> on the need to preserve Russian traditions, on the need of consolidating in the Russian Constitution the provisions about the unique role of Orthodoxy as the basis of national and cultural distinctiveness of Russia.

In sum, the evidence does more than suggest an unrestrained intersectionality between the State and Church in all areas of legislation, including within the realm of issues addressing the non-traditional sexual communities, which are deemed a manifestation of Western morality and are viewed as a direct threat to the Russian traditional family and survivability of the nation, of which, the 'Gay Propaganda' Law is only one exhibit of many.

The Ineffectiveness of 'Soft Power'

The European Union has expanded toward the east and absorbed many of the former Soviet satellite states, guided by the authority of the Copenhagen Criteria. This protocol, named only because of the city in which it was agreed, "bound the applying governments to amend legislation."[199] Günter Verheugen, EU commissioner for enlargement, stated that "the next enlargement will . . . give us the opportunity to unite the European continent – on the basis of shared ideals and agreed common values."[200] He continued by stating that, "they hope to build a new model of cooperative democratic governance, one capable of abolishing internal armed conflict, securing economic prosperity, developing lasting legitimacy for

[199] Tanner, Arno. "The Roma of Eastern Europe: Still Searching for Inclusion." *Migration Policy Institute.* May 1, 2005. http://www.migrationpolicy.org/article/roma-eastern-europe-still-searching-inclusion.

[200]Goldston, James A. "Roma Rights, Roma Wrongs." *Foreign Affairs* (Council on Foreign Relations) 81, no. 2 (2002): 149.

public institutions, and safeguarding individual's freedoms."[201] However, the European Union, along with its subsidiary judicial courts and agencies, does not have the authority to enforce any law on the individual member states, much less on non-member states, regardless of the holding rendered and regardless of the language in EU official documents.[202] Although then-EU Commission President Romano Prodi proclaimed that the "equal treatment of minorities is a cornerstone of the new united Europe,"[203] this rhetoric falls shallow without the power of enforceability and is fully dependent upon definitional agreements.

Much has been discussed and argued over the structure and power of the European Union. Some claim that it is a supranational 'state,' while others claim that it is merely an international 'organization.'[204] Under the auspices of a state, the EU should address a wide range of policy areas, have important roles within supranational organizations, directly elect the European Parliament, have a qualified majority voting in many areas, and possess the supremacy of EU law with direct effect.[205] Under the auspices of an international organization, the EU would have no taxes, army, or police; a central role for the Council of Ministers and the European Council; the second-order character of EP elections; *de facto* unanimity

[201] Ibid.

[202] CES. "What is Power?" *The University of North Carolina at Chapel Hill Center for European Studies.* 2016. http://europe.unc.edu/teaching/ces-produced/power-and-politics-the-eu-and-soft-power/.

[203] Goldstone, 151.

[204] Lelieveldt, Herman, and Sebastiaan Princen. "Reflecting on the EU as a Political System." In The Politics of the European Union, 277-297. Cambridge UK: Cambridge University Press, 2015, 291.

[205] Lelieveldt & Princen, 292.

in many areas; and the member states would implement most policies.[206] The prevalent opinion is that the EU exists in a political no-man's land, somewhere between both concepts. It doesn't have enough power to mandate laws and protocols within the member states, regardless of pledged goals under the Copenhagen Criteria for potential membership, and too much power to be subsequently dismissed as just another organization. Hence, without a strong enforcer of international law, any holdings are rhetorical in nature, at best, for non-member states.

To be brief, Europe's own regional mechanism "may be able to prod, push, and plead with national governments to improve their conduct, but they cannot substitute for the responsibility of states to enforce their own laws."[207] As such, the plethora of constitutional violations and incongruities with international treaties in the Russian Federation will continue to only be subject to the rule of law, or lack thereof, in Russia.

Hence, the community of non-traditional sexual minorities, as well as religious minorities, will continue to struggle for representation and equality before the law with little progress, just as they have done since December 25, 1991 when the Soviet Union collapsed, until alternative and more successful mechanisms are developed and infused into Russian society. When particular entities rise in power, it is inevitable that it will manifest to the detriment of fringe populations in a non-democratic society.

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[206] Ibid.

[207] Goldston, 154.

In closing, the potential of religion, however defined, to politically manipulate is evident as is reflected in the words of English theoretical physicist, Werner Heisenberg. At the 1927 Solvay Conference, he discussed Einstein and Planck's views on religion, stating:

> I cannot understand why we idle discussing religion. If we are honest – and scientists have to be – we must admit that religion is a jumble of false assertions, with no basis in reality. The very idea of God is a product of the human imagination. It is quite understandable why primitive people, who were so much more exposed to the overpowering forces of nature than we are today, should have personified these forces in fear and trembling. But nowadays, when we understand so many natural processes, we have no need for such solutions. I can't for the life of me see how the postulate of an Almighty God helps us in any way. What I do see is that this assumption leads to such unproductive questions as why God allows so much misery and injustice, the exploitation of the poor by the rich and all the other horrors He might have prevented. If religion is still being taught, it is by no means because its ideals still convince us, but simply because some of us want to keep the lower classes quiet. Quiet people are much easier to govern than clamorous and dissatisfied ones. They are also much easier to exploit. Religion is a kind of opium that allows a nation to lull itself into wishful dreams and so forget the injustices that are being perpetrated against the people; hence, the close alliance between those two great political forces, the State and the Church. Both need the illusion that a kindly God rewards – in heaven if not on earth – all those who have not risen up against injustice, who have done their duty quietly and uncomplainingly. That is precisely why the honest assertion that God is a mere product of the human imagination is branded as the worst of all mortal sins.[208] [209]

As long as religion is being used as a mechanism of State power, continued research and scholarship is required to attempt to unravel the exorbitant complexities of Church and State intersectionality, how it is formed and manifested, and the consequences thereof. The 1997 Law provided the initial impetus to legally launch

[208] Heisenberg, Werner. *Physics and Beyond: Encounters and Conversations*. New York, NY: Harper & Row, 1971.

[209] Brockman, John. "Science and Religion by Werner Heisenberg." Edge. 1927. https://www.edge.com/conversatio0n/science-and-religion.

a reestablishment of spiritual and moral authority by the Russian Orthodox Church, if only by the spirit of the law. Upon the foundation of the 1997 Law, the Church has proceeded to secure a perceived pre-ordained position of authority and legitimacy, from which the State simultaneously benefits. The evidence presented in this paper clearly highlights the incongruities of the paradoxical alliance between the Church and State in Russia.

CHAPTER IV:

CONCLUSION

In conclusion, this paper purports that the 1997 Law was an apparent pivotal mechanism for the Church to begin its ascension to reestablish power and influence in the Russian Federation and is incongruent with established Russian law. In addition, it is in direct violation of various international treaties, whether or not by the letter or spirit of the law, by providing the initial foundation upon which later preferential treatment and benefits to a privileged religion would be given in a multi-cultural and poly-confessional federative state. This paper has demonstrated the perceived manifestation of ecclesiastical power via the support and passage of the 'Gay Propaganda' Law, which provides a legitimating foundation upon which to direct violence against the minority LGBTQIA communities. Substantial polling data has been included and provided a linear trajectory of public opinion from the early 1990s to the present, proving that Russian Orthodoxy can be bifurcated into at least two different demographics: religiously observant Orthodoxy and culturally/secularly self-identified Orthodoxy.

The evidence put forth in this paper suggests that a genuine paradox exists in Russia between the Church and State. Assuming that 80% of the population self-identifies as Orthodox, that roughly 50% of the population believe to varying degrees in Church tenets, and that no more than 5% regularly attend church, there must be a non-religious role for Orthodoxy in the Russian Federation. Peter Tatchell writes that, "What happened here shows the flawed and failed nature of

Russia's transition to democracy . . . This isn't just about protecting the rights of the gay and lesbian community [or Orthodox believers], it's about the rights of all Russians to democratic freedoms."[210]

In sum, I ultimately conclude that the Church has not risen to or manifested power in the traditional sense via the 1997 Law or the 'Gay Propaganda' Law. However, it is the State that has manipulated the Church to further its own goals by utilizing a perceived source of legitimacy, as has been done so many times before throughout Soviet and Russian history. Simultaneously, the Church has responded with poignant memories of persecution via the lens of self-preservation, while conveniently taking advantage of bureaucratic institutions to further its traditional agenda. The State has made it clear, that while 'spirituality' remains an important component in Russia, in reality, the concept is "understood by state actors in ways that can hardly be called religious, let alone Orthodox."[211]

Unfortunately, time and patience are exponentially evaporating for substantive change, which is the emergence of prospective solutions for all of Russia's citizens and an ultimate end to undemocratic and insolent principles. These traditions of Church and State intersectionality are, at best outdated and at worst untenable, as the Russian Federation officially proclaims its secularity while simultaneously governing as a *de facto* religious state.

[210] Underwood, Alice E. M. "The Politics of Pride: The LGBT Movement and Post-Soviet Democracy." *Harvard International Review* 33, no. 1 (2011): 45.

[211] Papkova, 191.

TABLE 2:

Relevant International Treaties of the Russian Federation

Name of Treaty	**Signature**	**Ratification**	**Accession**	**Entry into Force**
ICCPR	18/5/1968	16/10/1973	-	-
Optional Protocol to the ICCPR	-	-	1/10/1991	-
Int'l Covenant on Economic, Social, and Cultural Rights	18/3/1968	16/10/1973	-	-
Convention on the Rights of the Child	26/1/1990	16/8/1990	-	-
Freedom of Association and Protection of the Right to Organize Convention	-	10/8/1956	-	-
ECHR aka European Convention for the Protection of Human Rights and Fundamental Freedoms	28/2/1996	5/5/1998	-	5/5/1998
ECHR Protocols 1-12	-	-	-	All, no later than 1/11/1998

Table 3:

International Treaty Terminology

- **SIGNATURE Subject to Ratification, Acceptance or Approval**
  - Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.
  - [Arts. 10 and 18, Vienna Convention of the Law of Treaties 1969]

- **RATIFICATION**
  - Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.
  - [Arts. 2 (1)(b), 14 (1) and 16, Vienna Convention of the Law of Treaties 1969]

- **ACCESSION**
  - "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question.
  - Arts. 2 (1)(b) and 15, Vienna Convention on the Law of Treaties 1969]

- **ENTRY INTO FORCE**
  - Typically, the provisions of the treaty determine the date on which the treaty enters into force. Where the treaty does not specify a date, there is a presumption that the treaty is intended to come into force as soon as all the negotiating states have consented to be bound by the treaty. Bilateral treaties may provide for their entry into force on a particular date, upon the day of their last signature, upon exchange of the instruments of ratification or upon the exchange of notifications. In cases where multilateral treaties are involved, it is common to provide for a fixed number of states to express their consent for entry into force. Some treaties provide for additional conditions to be satisfied, e.g., by specifying that a certain category of states must be among the consenters. The treaty may also provide for an additional time period to elapse after the required numbers of countries have expressed their consent or the conditions have been satisfied. A treaty enters into force for those states which gave the required consent. A treaty may also provide that, upon certain conditions have been met, it shall come into force provisionally.
  - Art. 24, Vienna Convention on the Law of Treaties 1969]

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