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Russian Politics of Masculinity and the Decay of Feminism: The Role of Dissent in Creating New "Local Norms"

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RUSSIAN POLITICS OF MASCULINITY AND THE DECAY OF FEMINISM: THE ROLE OF DISSENT IN CREATING NEW "LOCAL NORMS"

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ABSTRACT

Over the past decade, the Russian state has been deliberately pursuing politics of masculinity that aim to actively undermine feminist dissenting voices by presenting feminism as something that is foreign and inappropriate for the Russian context. This Article examines why Russian domestic feminism has failed to generate a re-examination of entrenched gender stereotypes and barriers in Russia. The Article concludes that in order to effectively combat gender stereotyping and reduce structural barriers that continuously relegate women to the private sphere, new "local norms" based on gender equality need to develop. In order for these new local norms to gain public acceptance, the role of "translators," such as civil society and domestic activists, cannot be underestimated. Unfortunately, in today's Russia, such "translation" work is highly discouraged by the state. The Russian state is simply unwilling to cede some of its power and account for dissent in order to advance gender equality, as opposed to its current politics of masculinity.

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INTRODUCTION

Over the past decade, the Russian state has deliberately pursued politics of masculinity that aim not only to relegate women's

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rights into the private sphere, defining them in terms of concerns and preferences—rather than as something the state has an obligation to enforce—but also to actively undermine feminist dissenting voices by presenting feminism as something that is foreign and inappropriate for the Russian context. While the #MeToo movement is gaining momentum in the West, resulting in the re-examination of entrenched gender stereotypes and barriers, this Article examines why Russian domestic feminism is not able to generate a similar re-examination of values within Russia.

Part I of the Article examines the gradual masculinization of the Russian state, the rise of gendered discourses that present feminism as a Western imposition, and the reasons for the decline of the Russian domestic feminist movement. It looks at the sentencing decision in the Pussy Riot case, and discusses the difficulties experienced by feminist dissenters who attempt to serve as "translators" of Western feminist values. The Article further looks at how the Pussy Riot decision was used to send a powerful message to Russian human rights activists to stop challenging the state's genderized politics. Part II looks at the position of the Russian state in regards to "third-generation" human rights and traditional cultural norms, vocalized as "unchangeable local culture." Part of this positioning involves the Russian state's active perpetuation of gender stereotyping, as represented in the *Markin* decision by the Russian Constitutional Court.[1] The last section of Part II examines the role of the Russian judiciary in supporting and reinforcing the state's politics of masculinity, as well as the legislative perpetuation of patterns of gender violence, by looking at the 2017 amendments to the Russian Criminal Code that decriminalize certain forms of domestic violence.[2] The Article concludes that in order to effectively combat gender stereotyping and reduce the structural barriers that continuously relegate women to the private sphere, new "local norms" based on gender equality need to develop. In order for these new local norms to gain public acceptance, the role of "translators," such as civil society and domestic activists, cannot be underestimated. Unfortunately, in today's Russia, such "translation" work is highly discouraged by the state. The Russian state is unwilling to cede some of its power and account for dissent in order to advance gender equality, as opposed to its current politics of masculinity.

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1. Opredeleniye Konstitutsionnogo Suda Rossiiskoi Federatsii ot 15 Yanvarya 2009 g [Ruling of the Russian Federation Constitutional Court of Jan. 15, 2009], GARANT.RU, 2009, No. 187-O-O.

2. *See infra* Section II.B.

I. THE MASCULINIZATION OF THE STATE AND THE DECAY OF FEMINISM

As President Vladimir Putin solidified his rule and reasserted state control over many aspects of Russian life, a gradual masculinization of the state and a decline of feminism resulted. At first, the president's masculinity was used to project the idea that he was capable of restoring Russia's global stature.[3] However, soon "masculinity politics became central to the new state-engineered mobilization."[4] Gendered discourses are deliberately used for the dual purposes of nation building and branding, where "the border between gendered Us and Others" is created and perpetuated.[5] For example, the government invested heavily in the project of creating various "state-friendly" youth groups infused with heteronormative, male-dominated ideology.[6] At the same time, many opposition movements and their leaders were deliberately feminized and portrayed in non-heteronormative ways, in an attempt to discredit the "moral values" of their policies and portray them as personally weak.[7] For example, during one of the pro-Kremlin youth camps, photoshopped pictures of various opposition leaders dressed up as transvestite prostitutes were distributed.[8] Furthermore, given Russia's current conflict with Ukraine over the annexation of Crimea, Russian media has actively engaged in the "demasculinization" of Ukraine, by actively using gender metaphors portraying Ukraine as a "picky girl" and "flighty . . . mistress," and generally presenting Ukraine as a state under "external control" that is "weak, dependent, and mixed up."[9] Thus, gender has been turned into a political trigger in order to mainstream an ideology of "traditional values."

The regime has chosen the discourse of "traditional values" to create an "alternative intellectual space," rather than just a physical space, for anti-Western resistance.[10] Thus, gendered discourses have been used to maintain physical borders and possibly to expand intellectual ones, and are thus inextricably tied to Russian masculine

3. Janet Elise Johnson, *Pussy Riot as a Feminist Project: Russia's Gendered Informal Politics*, 42 NATIONALITIES PAPERS 583, 583–85 (2014).

4. *Id.* at 585.

5. Liudmila Voronova, *Gender Politics of the "War of Narratives": Russian TV-News in the Times of Conflict in Ukraine*, 9 CATALAN J. COMM. & CULTURAL STUD. 217, 219 (2017).

6. Johnson, *supra* note 3, at 585.

7. Voronova, *supra* note 5, at 219, 227.

8. Johnson, *supra* note 3, at 585.

9. Voronova, *supra* note 5, at 226–27 (citation omitted).

10. *Id.* at 218–19, 224.

versions of national security and the country's role in international politics.[11] Gendered discourses are particularly useful in this creation and demarcation of borders, because "gender discourse allows for 'humanizing' the national community, making it closer to the everyday experiences of the person and ensuring the functioning of 'banal nationalism.'"[12] Given the state's heavy investment in maintaining its "moral sovereignty" based on "traditional values," the politics of masculinity have been used to blame feminism for various social problems, to perpetuate gender stereotyping,[13] and to further promote anti-Western attitudes, portraying feminism and pro-gay rights movements as Western "moral colonialism" designed to weaken Russia's geopolitical stance.[14] For example, "[the] construction of neologism 'Gayropa' that appeared in the Russian discourses in the 2010s in order to point to homosexuality . . . as 'the essence of the European lifestyle,' making Europe a 'degenerate civilization' and Russia—a 'bastion of moral principles.'"[15] The politics of masculinity certainly contributed to the 2013 federal anti-gay propaganda laws that provide fines for "[p]ropaganda of non-traditional sexual relations among minors" and stigmatize non-reproductive sex.[16] The politics of masculinity also gave a public platform to views that urged women not to provoke men to rape by wearing revealing clothing.[17] Feminism was blamed for "40 million [Russian] women who do not have husbands and experience deep unhappiness."[18] Most recently, a video advertisement calling on Russians to vote in the presidential elections on March 18, 2018, which went viral in Russia, painted the "future facing those who fail to show up at the polls . . . with a slew of comically absurd laws."[19] However, "the most egregious outcome

11. *See id.*

12. *Id.* at 220 (quoting MICHAEL BILLIG, BANAL NATIONALISM (1995)).

13. *See* T.A. Volkova & N.A. Volkov, *Realizatsiya Printsipa Gendernogo Ravenstva v Sovremennoy Rossii*, 19 VESTNIK KEMGUKI ZHURNAL TEORETICHESKIKH I PRIKLADNYKH ISSLEDOVANIY 244–46 (2012) (Russ.).

14. *See* Oleg Riabov & Tatiana Riabova, *The Remasculinization of Russia? Gender, Nationalism, and the Legitimation of Power Under Vladimir Putin*, 61 PROBS. POST-COMMUNISM 23, 25, 31–32 (2014).

15. Voronova, *supra* note 5, at 226 (quoting Riabov & Riabova, *supra* note 14, at 27).

16. Federal'nyi Zakon RF o Vnesenii Izmeneniy v Stat'yu 5 Federal'nogo Zakona o Zashchite Detey ot Informatsii Prichinyayushchey Vred ikh Zdorov'yu I Razvitiyu [Federal Law on Amending Article 5 of the Federal Law on Protection of Children from Information Harmful to Their Health and Development], ROSSIISKAIA GAZETA [ROS. GAZ.] July 2, 2013.

17. Johnson, *supra* note 3, at 585.

18. *Id.*; *see also* Olga Gumanova & Tatiana Barkhatova, *Zhenshiny—Sushestva Vtorogo Sorta?*, PRAVDA.RU (Mar. 10, 2011, 7:19 AM), https://www.pravda.ru/faith/religions/orthodoxy/10-03-2011/1069463-adamieva-0 [https://perma.cc/7T8V-FU4B] (Russ.).

19. *Russians Threatened with Conscription and Gay Homestays in Presidential Campaign Ad*, MOSCOW TIMES (Feb. 19, 2018, 2:02 PM), https://themoscowtimes.com/news

of the man's decision not to vote is a law assigning each family with a 'gay homestay' for a week."[20] In the advertisement, the man's wife says "[i]f he doesn't find himself a pair, then you'll have to be with him."[21] "The law is the law," a flamboyantly dressed gay man says to his host "before suggestively biting into a banana."[22] The video is clearly designed to reinforce the image of the Russian president as a protector of heterosexual masculinity from outside threats. While the regime has actively constructed feminism as a Western import that has no place in Russia, concern about women's issues is certainly not new. Domestic feminism started to take root in Russia with some local adaptations, especially concerning issues of violence within families and female poverty following the collapse of the Soviet Union.[23]

The Russian feminist movement started to emerge after the 1917 Revolution, when the first Soviet Constitution formally proclaimed male and female equality in 1917.[24] However, by the 1930s the Soviet government claimed that women's issues were largely solved.[25] For seventy years of Soviet rule, each and every Soviet Constitution proclaimed a commitment to formal equality, while refusing to recognize the paternalism of power. The Soviet state, while proclaiming its commitment to gender equality, perpetuated a division of functions between males and females and continuously used women to solve economic and demographic problems.[26] In other words, constitutionally prescribed gender equality did not translate into popular cultural norms, and women were kept out of political decision-making.[27] In the 1980s women's issues were being openly discussed, and then in the 1990s, the Russian feminist movement experienced a period of growth.[28] In part, such growth was prompted "by grants from Western foundations, such as the Open Society Foundation, the MacArthur Foundation, IREX, and the Fulbright

/russians-threatened-with-conscription-gay-homestays-presidential-campaign-ad-60555 [https://perma.cc/Q7JC-D58J]. For instance, the video depicts a "52-year-old man dream-[ing] that he is drafted into a multi-ethnic army, harassed by a communist son for donations and forced to limit his daily number of bathroom visits." *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. Johnson, *supra* note 3, at 586.

24. Volkova & Volkov, *supra* note 13, at 243.

25. *Id.*

26. N.L. Pushkareva, *Gde Bolshe Vlasti—Tam Men'she Zhenschin (Gendernaya Ekspertiza Zakonodatelstva I Tekuschei Zakonotvorcheskoi Deyatel'nosti Vysshih Organov Vlasti RF 1991–2006 gg)*, 1 NAUCHNYE VEDOMOSTI BELGU SER. ISTORIYA POLITOLOGIYA. EKONOMIKA. INFORMATIKA 118–19 (2008) (Russ.).

27. *Id.* at 119.

28. Natalia Pushkareva & Maria Zolotukhina, *Women's and Gender Studies of the Russian Past: Two Contemporary Trends*, 27 WOMEN'S HIST. REV. 71, 76 (2018).

program."[29] However, the 2000s saw the decline of feminism in particular, and Western ideas more generally, in Russian socio-legal consciousness, especially as the Russian state commenced its pursuit of a "traditional values" campaign and enacted laws designating NGOs, receiving Western funding, as "foreign agents."[30] Currently, the only women's rights NGOs allowed to operate in Russia, without harassment and intimidation, are ones dedicated to the study and support of families with a traditional division of roles and to stemming the integration of Western ideas into Russian women's movements and academic research.[31] The state is actively engaged in propagating the idea that the main function of the family is reproductive.[32] State crackdown on foreign-funded NGOs is pursued with the explicit purpose of rendering unacceptable "Western 'permissive' attitudes towards sexual minorities, gay marriage, small families and reduced fertility as well as feminism itself."[33]

While the Russian Constitution continues the tradition of proclaiming gender equality in s.19(3),[34] Russian popular culture keeps voicing the idea that feminism is "not normal," as "normal" women should prefer family and children over the struggle for rights and equality with men.[35] The Russian state, through various pronatalist policies,[36] is actively trying to bring women within the framework of marriage and reinforce the idea that all female relationships with the state should be mediated through the prism of marriage, which in turn is based on a model of male provider and female dependent. In a sense, the state is attempting to insert heterosexual marriage based on "traditional values" as a "necessary part of women's public legal identities."[37] Feminism remains increasingly marginalized in

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29. *Id.*

30. Federal'nyi Zakon RF o Vnesenii Izmeneniy v Otdel'nyye Zakonodatel'nyye Akty Rossiiskoi Federatsii v Chasti Regulirovaniya Deyatel'nosti Nekommercheskikh Organizatsiy, Vypolnyayushchikh Funktsii Inostrannogo Agenta [Federal Law on Amending Certain Legislative Acts of the Russian Federation Regarding Regulation of Activities of Non-Profit Organizations Performing the Functions of a Foreign Agent], ROSSIISKAIA GAZETA [ROS. GAZ.] July 23, 2012.

31. Pushkareva & Zolotukhina, *supra* note 28, at 79.

32. Vladimir M. Puchnin & Sergei V. Shunyaev, *Znachenie Definitsii, Sostavlyauschih Ponyatie "Nasilie v Sem'e," Kak Asotsial'nogo Yavleniya, Posyagauschego na Svobodu Lichnosti*, 12 VESTNIK TAMBOVSKOGO UNIVERSITETA. SERIYA: GUMANITARNYYE NAUKI 310, 313–14 (2010) (Russ.).

33. Pushkareva & Zolotukhina, *supra* note 28, at 79 (footnote omitted).

34. Pushkareva, *supra* note 26, at 121–22.

35. Olga Voronina, *Has Feminist Philosophy a Future in Russia?* 34 SIGNS 252, 252 (2009).

36. Ariela Dubler et al., *Women's Rights: Reframing the Issues for the Future*, 12 COLUM. J. GENDER & L. 333, 339 (2003).

37. *Id.* at 339–40, 350.

Russia, and explicit anti-feminist statements are heard more and more frequently.[38] Russian women's organizations prefer to engage in issue-specific struggles, such as helping victims of family violence, or even the struggle for labour rights, but they do not generally engage in critiquing structural discrimination and gender stereotyping against women in Russian society.[39] Russian women academics, researchers, and activists remain, for the most part, excluded from global feminist and gender networks.[40] Some Russian women's organizations also feel that receiving foreign donor money, and being told how to shape and proceed with their agendas, involve echoes of imperialism, and thus, should be avoided.[41] This critique is not just a point of pride, but is in part shaped by granting history of the 1990s, leading to the perception that:

> fads and fashions of donors' changing priorities for funding—such as first supporting work connected with domestic violence and crisis centres and then switching away from them to call for attention to human trafficking—often means just short-term backing for serious projects before further redefinition, thus leaving organizations without help unless they hastily remodel or repackage themselves.[42]

Thus, few grants coming from foreign donors are seen as actually enabling activists to address, in a sustained fashion, the structural forms of discrimination experienced by Russian women.

In response to these local manifestations of feminism, the regime invested heavily in attracting high-profile women into the Russian political landscape; however, women in government are often "'showgirls,' a feminized version of 'locomotives,' a widespread informal practice of nominating big names, such as celebrities, singers and athletes (including a ballerina, a rhythmic gymnast and a former Playboy model) to attract voters, some of whom then decline to serve."[43] In other words, women are included for the sake of appearances and are frequently used to promote anti-feminist initiatives. For example, Russian Parliamentarian, Yelena Mizulina, has promoted both the anti-gay propaganda law and the amendments

38. Pushkareva & Zolotukhina, *supra* note 28, at 79.

39. Voronina, *supra* note 35, at 254.

40. *Id.*

41. Amrita Basu, *Who Secures Women's Capabilities in Martha Nussbaum's Quest for Social Justice?* 19 COLUM. J. GENDER & L. 201, 201, 204 (2010).

42. Mary Buckley, *The Politics Surrounding Gender Issues and Domestic Violence in Russia: What Is to Be Done, By Whom and How?* J. COMMUNIST STUD. & TRANSITION POL. 435, 442 (2010).

43. Johnson, *supra* note 3, at 587–88 (citation omitted).

decriminalizing certain instances of domestic violence, while Parliamentarian Yekaterina Lakhova has lobbied for Russia's infamous anti-Magnitsky (Dima Yakovlev) law.[44] This law creates a list of foreigners banned from entering Russia, suspends the activity of NGOs receiving foreign funding, and bans United States' citizens from adopting Russian children.[45] The public perception of politics remains genderized (i.e., politics are seen as the domain of men).[46] Apart from a few prominent high-positioned women, women in Russian civil service tend to be concentrated in positions where they do not make significant political decisions.[47] At the same time, civil service attracts a significant share of women, who in turn, become dependent on the state for their economic survival, and hence, reluctant to challenge genderized state policies. In a sense, women are co-opted into the politics of masculinity pursued by the regime and rewarded for their loyalty. Those who refuse to play by the rules and argue against the mainstream establishment are punished and delegitimized.[48] A recent sexual harassment scandal, involving several Russian female journalists and a State Duma deputy, illustrated the pervasiveness of this phenomenon in Russian genderized politics.[49]

The international incident around the women in Pussy Riot, who staged a "punk prayer" in the Cathedral of Christ the Saviour in Moscow, and their subsequent trial and harsh prison sentences, illustrate the states' severe response to those challenging its vision of Russia's moral stance and to women "behaving in unfeminine ways."[50]

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44. *See The Dima Yakovlev Law: Ethical Implications of the Russian Adoption Ban*, GEOHISTORY (Sept. 1, 2013), https://www.geohistory.today/dima-yakovlev-law-ethics [https://perma.cc/MYY7-8RSB]; Shaun Walker, *Fury at Russian Move to Soften Domestic Violence Law*, GUARDIAN (Jan. 19, 2017, 9:56 PM), https://www.theguardian.com/world/2017/jan/19/russian-soften-domestic-violence-law-decriminalise-womens-rights [https://perma.cc/GEP2-N2BH]; *see, e.g.*, Sewell Chan, *Russia's 'Gay Propaganda' Laws Are Illegal, European Court Rules*, N.Y. TIMES (June 20, 2017), https://www.nytimes.com/2017/06/20/world/europe/russia-gay-propaganda.html [https://perma.cc/E49N-EL66]; Mary Zelenova, *Invisible Children: Russia's Dima Yakovlev Law*, NAOC (Feb. 1, 2017), http://natoassociation.ca/invisible-children-russias-dima-yakovlev-law [https://perma.cc/H8UV-VTGH].

45. Federal'nyi Zakon RF o Merakh Vozdeystviya na Lits, Prichastnykh k Narusheniyam Osnovopolagayushchikh Prav I Svobod Cheloveka, Prav I Svobod Grazhdan Rossiyskoy Federatsii [Federal Law On Measures to Influence Individuals Involved In Violations of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation], ROSSIISKAIA GAZETA [ROS. GAZ.] Dec. 29, 2012.

46. Pushkareva, *supra* note 26, at 122.

47. *Id.* at 123.

48. *Id.* at 124.

49. Oksana Pushkina, *Russian Deputy Vows to Criminalize Sexual Harassment After Duma Scandal*, MOSCOW TIMES (Feb. 27, 2018, 3:02 PM), https://themoscowtimes.com/news/russian-deputy-vows-criminalize-sexual-harassment-after-duma-scandal-60640 [https://perma.cc/KH2U-GRE5].

50. Peter Rutland, *The Pussy Riot Affair: Gender and National Identity in Putin's Russia*, 42 NATIONALITIES PAPERS 575, 575, 579 (2014).

Those challenging the states' vision present an asymmetrical challenge to the states' carefully cultivated "legitimacy . . . based on a heavily masculinized image."[51]

A. The Pussy Riot Sentencing Decision (2012)

The Pussy Riot case stems from the arrest of three women in March of 2012.[52] Nadezhda Tolokonnikova, Maria Alekhina, and Yekaterina Samutsevich were charged with criminal hooliganism motivated by religious hatred.[53] On the morning of February 21, 2012, several women entered Christ the Saviour Cathedral in Moscow.[54] Upon entering the cathedral, they dumped their backpacks in a pile, took off their outerwear to reveal short colourful dresses, put balaclavas on their faces, crossed the gate separating the nave from the iconostasis and altar, plugged in an amplifier for an electric guitar, and began singing and dancing.[55] On August 17, 2012, the three women were convicted and each sentenced to two years of imprisonment.[56] Witnesses called by the court and the accused disagreed about the lyrics.[57] The accused women claimed that they said "Holy Mother, drive out Putin" and "Holy Mother, become a feminist."[58] The prosecution's witnesses claimed that the women cursed and insulted God and the Church.[59]

In addition to the content of the accused's lyrics, the inappropriate dresses, and the behavior, most of the prosecution's witnesses were "particularly dismayed that *women* had violated a sacred space reserved exclusively for men" and strongly objected to that fact.[60] All of the prosecution's witnesses testified that there was nothing political in the women's words, actions, or gestures, and all their actions were premeditated, malicious blasphemy, designed to attract media attention, including foreign media.[61] The witnesses for

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51. *Id.* at 579.
52. *Id.* at 577.
53. *Id.*
54. Rutland, *supra* note 50, at 576; *see also Prigovor Pussy Riot*, SNOB.RU 24, 24 (Aug. 22, 2012), https://snob.ru/selected/entry/51999 [https://perma.cc/5LLK-ZSJC].
55. *Prigovor Pussy Riot*, *supra* note 54, at 27.
56. *Pussy Riot v. Russia*, *Case No.1-170/12* (Aug. 17, 2012), http://globalfreedomofexpression.columbia.edu/cases/pussy-riot-vs-russia [https://perma.cc/M7PW-PBDH]; *see also* Rutland, *supra* note 50, at 577.
57. Catherine Schuler, *Reinventing the Show Trial Putin and Pussy Riot*, 57 TDR 7, 11 (2013).
58. *Prigovor Pussy Riot*, *supra* note 54, at 25.
59. *See id.*
60. Schuler, *supra* note 57, at 12.
61. *Id.*

the defense were more harmful than helpful to the accused's case.[62] Most of the witnesses limited themselves to short generic statements that the accused were good students, good mothers, and not aggressive in their interactions.[63] Yekaterina Samutsevich's father stated that he was surprised that his daughter—who was always a good girl until she fell under the influence of Nadezhda Tolokonnikova—decided to follow feminism.[64] He stated that, in his view, feminism is antithetical to Russian civilization and is for the West, not for Russia.[65] Another point of note is that the judgment makes it clear in its description of the collected evidence, that only Nadezhda Tolokonnikova's apartment was searched.[66] The judgment, on several occasions, emphasizes that during the search of Tolokonnikova's apartment, which she shared with her husband, the police located a Canadian passport held by her husband and Tolokonnikova's Canadian permanent resident card, as well as her Canadian Social Insurance Number and provincial health card.[67] Thus, the court strongly implied the possibility of "foreign influence."[68]

In their response to the accusations of hate crimes, the women, especially Tolokonnikova, argued that they were not motivated by religious hatred, but rather, were trying to mount a political protest in an artistic form.[69] Their main complaints included the suppression of dissent by the Russian state, anti-gay propaganda laws, and the inappropriate support by the Church of Putin's presidency.[70] The women also objected to traditional patriarchal families, where women are deemed less important and subordinate to men.[71] This objection to patriarchy is what motivated the women to enter the area of the Church—traditionally reserved for men—and to call for the Mother of God to become a feminist.[72] Nadezhda Tolokonnikova, arguably the most vocal of Pussy Riot's members, stated:

> [w]ho could have supposed that history, in particular the still recent history of Stalin's terror, would not be taught at all? It makes you want to weep, looking at how methods of the medieval inquisition reign over security and judicial systems in the

62. *See id.*
63. *See id.*
64. *Prigovor Pussy Riot*, *supra* note 54, at 33.
65. *Id.*
66. *Id.* at 34–35.
67. *Id.*
68. Schuler, *supra* note 57, at 13.
69. *Id.* at 12.
70. *See Prigovor Pussy Riot*, *supra* note 54, at 26.
71. *Id.*
72. *See id.* at 39.

> Russian Federation, which is our country. From the moment of our arrest we could not weep anymore, we have forgotten how to cry; we shouted in despair at our punk concerts, as we could and as we knew how, about the lawlessness of bosses and of power, but now they've stolen our voices.[73]

The court concluded that the accused's actions were motivated by hatred for Orthodox believers and caused significant emotional and moral damage to the employees and parishioners present in the Church on the day of the "punk prayer," as well as to every Christian globally who saw the video posted on the Internet.[74] The court's conclusions completely discounted the artistic and political nature of the accused's actions. Moreover, the court's conclusion about the presence of religious hatred seemed, in part, to be based on a negative view of feminism. Specifically, the court stated that:

> [c]urrently, individuals following the feminist movement are fighting for gender equality in political, family, and sexual relations. While following the ideology of feminism does not constitute a crime or another type of an offence in the Russian Federation, a number of religions, such as Orthodoxy, Catholicism, and Islam, cannot be reconciled with the ideas of feminism. While feminism does not represent a religious ideology, the followers of feminism are interfering with such public spheres as public morals, norms of propriety, family relations, and sexual relations, all of which have been historically built on the basis of religious principles. Thus, espousing the superiority of one ideology over others, leads to hate and strife. This hate, including religious hate, has been conclusively proven as a motivation behind the actions of the accused.[75]

In this way, the court's judgment makes it clear that feminism, and those who espouse it, will be viewed as undermining the state's concept of public good, and will be dealt with harshly.

Despite the portrayals of the women from Pussy Riot as engaging in behaviour that was not only "un-Russian" in its open alignment with feminism, but also possibly subversive of Russian national security—some claiming that it was catering directly to Western audiences and influences—the idea of the artistic and intellectual community standing up to the state has deep roots in Russian culture, in both the pre-revolutionary and Soviet periods.[76] As one

73. Schuler, *supra* note 57, at 15 (citation omitted).
74. *See Prigovor Pussy Riot*, *supra* note 54, at 27.
75. *Id.* at 40 (translated by author).
76. *See* Pushkareva, *supra* note 26, at 80.

author put it, "the lack of space for critical political action in the public sphere meant that the responsibility for questioning authority fell to artists and writers."[77] However, it is also clear that the Pussy Riot trial was predetermined to focus on religion, and by extension on reasserting Russia's moral sovereignty and superiority over the West, rather than examining politics and art.[78] In the end, the Pussy Riot trial was used by the Russian state to highlight and reinforce its anti-Western stance, in part, due to the fact that the pro-feminist attitudes of Pussy Riot members were perceived by the Russian general public as part of a Western conspiracy to weaken Russia. However, Western feminist thinking has not penetrated Russian society. In a sense,

> Pussy Riot became evidence for the threat posed by the West's moral nihilism, undermining the "Orthodox majority" that was portrayed as representing the core of the Russian nation. There was indeed a conspiracy afoot—but it was one orchestrated by the Russian state, against the opposition.[79]

One of the key reasons that the women of Pussy Riot received such severe treatment was their questioning of the masculinized heteronormative campaign for "traditional values," and their attempting to serve as "translators" of Western feminist values, by vernacularizing those values for a Russian audience. After all, "[t]he transformation of the 'other's' concept into 'your own' (including the transformation of the 'other's' feminism in its Russian version) must take the form of an individual interiorization of some of its concepts."[80] The Russian state is determined to suppress such dissenting voices, and hence, the women of Pussy Riot were cynically used by the state to send a message to both Western human rights campaigners and Russian human rights activists.[81]

II. CHALLENGING THE MASCULINITY OF THE STATE

Following the Pussy Riot case, President Putin, in his December 2013 state of the nation address, declared that many Western countries are determined to redefine moral norms and erase national

77. Rutland, *supra* note 50, at 576.
78. *Id.* at 577.
79. *Id.* at 581.
80. Pushkareva & Zolotukhina, *supra* note 28, at 79.
81. *See* Brian Whitmore, *Vladimir Putin, Conservative Icon*, ATLANTIC (Dec. 20, 2013), https://www.theatlantic.com/international/archive/2013/12/vladimir-putin-conservative-icon/282572 [https://perma.cc/F2V4-EWQ2].

traditions and cultural differences.[82] This forces societies not only to recognize perfectly legitimate rights protecting freedom of conscience, political freedom, and private life, but also to equate good and evil due to the undermining of traditional values. Putin stated that it is Russia's duty to protect traditional values, including traditional families.[83] Putin also noted that the world supports Russia's "defense of traditional values" against "genderless and infertile" tolerance.[84] Such position taken by the Russian President, and echoed by prominent Russian politicians, inevitably makes the assumption that the concept of "traditional values" is an easily definable one and, moreover, that it is stable.[85] In reality, the sustainability and stability of these concepts are secured by those who get to tell the story, and thus, determine the definition of the truth.[86] The Russian state is deliberately engaging in "confirming the normality of the Self by naming the deviance of the Other."[87] This Russian positioning, regarding certain human rights, such as gender equality, is not uncommon, since "[t]hose who resist human rights often claim to be defending culture."[88] Local norms, of course, are not necessarily "bounded, immutable, and well settled."[89] Nonetheless, if cultural norms are constantly presented and conceptualized as immutable, this impacts how social change is imagined by both the state and those involved in social movements.[90]

The Russian state has certainly propagated the idea of an unchangeable local culture, and has positioned itself as a defender of this culture, and by extension of the Russian people, from harmful outside influences. The Pussy Riot case provides a powerful illustration of state resistance to the idea of feminism and the promotion of "traditional family" pronatalist policies.[91] Despite the Russian state's

82. *See id.*; N.S. Semenova, *Traditsionnye Tsennosti v. "Prava LGBT" V Ramkah Realizatsii Prava Na Obrazovanie: Mezhdunarodno-Pravivoi Podhod*, 6 VESTNIK RUDN 82, 86 (2016) [in Russian].

83. Semenova, *supra* note 82, at 86–87.

84. Marko Duman, *Russia's Conservative "Family Values" Are a Sham*, MOSCOW TIMES (Sept. 7, 2014, 6:09 PM), http://themoscowtimes.com/articles/russias-conservative-family-values-are-a-sham-39115 [https://perma.cc/2VAN-VWVC].

85. Semenova, *supra* note 82, at 86–87.

86. *See generally* Daniel H. Kaiser, *"He Said, She Said": Rape and Gender Discourse in Early Modern Russia*, 3 KRITIKA: EXPLORATIONS IN RUSSIAN AND EURASIAN HIST. 197, 197 (2002), https://muse.jhu.edu/article/18741/pdf.

87. Ralph Sandland, *Crossing and Not Crossing: Gender, Sexuality and Melancholy in the European Court of Human Rights*, 11 FEMINIST LEGAL STUD. 191, 203 (2003).

88. Sally Engle Merry, *Human Rights and Transnational Culture: Regulating Gender Violence Through Global Law*, 44 OSGOODE HALL L.J. 53, 60 (2006).

89. *Id.* at 64 (footnote omitted).

90. *Id.*

91. Duman, *supra* note 84.

repeated declarations of maintaining and defending "traditional values," these values are built on a rather shaky foundation. Russia, for instance, has one of the highest divorce rates in the world.[92] Its abortion rate, similarly, remains one of the highest.[93] Working mothers and single mothers are a normalized phenomenon in Russian society.[94] Moreover, despite its public condemnation of homosexuality, "Russia's public space is no stranger to cross-dressing, drag, and unorthodox gender-bending," especially when it comes to the Russian entertainment scene.[95] However, despite recurring challenges to the state's "traditional values" discourse, these values continue to be propagated by the Russian state through its repeated emphasis on the inferiority of so-called third-generation human rights, which include various collective rights as well as women's rights.[96] As third-generation rights, such as gender equality, come into increasing conflict with first-generation civil and political rights, the discourse of "traditional values" and "cultural norms" is utilized to discount the legitimacy of women's claims and to protect the status quo.[97] After all, while s.19 of the Russian Constitution guarantees formal gender equality, women in Russia face a multitude of structural barriers.[98] In part, such barriers persist due to women's rights and gender equality being deemed secondary and subservient to first-generation civil and political rights, which are targeted much more at protecting males from state interference within the public realm, than females within the private realm, where the rhetoric of "traditional values" continuously pushes women.[99]

One of the key issues when it comes to advancing change and changing public perceptions of women's rights and feminism is that, when cultural norms are perceived as absolutist, the struggle to change such norms becomes that much more difficult. Hence, so-called "translators" or "intermediaries" (people who live and navigate between multiple systems) become key to achieving change. The role of such individuals is critical as "human rights ideas are

92. *Id.*

93. *Id.*

94. Natalia Antonova, *No Way Back for Russian Women*, MOSCOW TIMES (Nov. 5, 2015, 4:11 PM), https://themoscowtimes.com/articles/8198no-way-back-for-russian-women-50650 [https://perma.cc/99DT-HV6H]; *see also* P.U. Kapustina et al., *Gendernye Stereotipy v Studencheskoi Srede*, J. SIBERIAN MED. SCI. 1, 7 (2014) (Russ.).

95. Duman, *supra* note 84.

96. *See* N.A. Volkov & T.A. Volkova, *Problemy Realizatsii Gendernoi Strategii Rossii v Kontekste "Pokolenii" Prav Cheloveka*, 29 VESTNIK KEMGUKI 1, 101 (2014) (Russ.).

97. *See id.* at 102–04.

98. *See id.*

99. Natsu Taylor Saito, *Considering "Third Generation" International Human Rights Law in the United States*, 28 U. MIAMI INTER-AM. L. REV. 387, 398 (1997).

appropriated, encouraged, and resisted in many locations around the world."[100] Within Russia, various voices of dissent continue to challenge the state's masculinized vision of Russian society. For example, in 2016, thousands of women in Ukraine, Russia, and Belarus went on social media to share their experiences of sexual violence in the "#IAmNotAfraidToSpeak" flash mob.[101] A number of prominent Russian women joined this flash mob to share their stories and to start challenging the blaming of female victims.[102] While this flash mob drew widespread support on the Internet, it also attracted significant backlash on social media, claiming that the flash mob was caused by the desire for "cheap popularity and attention."[103] Moreover, various church figures stated that stories of sexual violence should not be posted on the Internet, and that some female activists "suffer[ed] from 'exhibitionism,'" since information about sexual violence should not be made public.[104] The flash mob organizer's Facebook account was also suspended.[105] The politics of masculinity pursued by the Russian state, and its insistence on traditional values and local cultural norms, demonstrate that there are "fissures between the global settings where human rights ideas are codified into documents and the local communities where the subjects of these rights live and work."[106] If the idea of gender equality is to be translated into concrete action and have an impact, it would need to become "part of the consciousness of ordinary people,"[107] which the state is actively preventing at this point in time.

A. Gender Stereotyping: Markin v. Russia *Case*

Part of the Russian state's static approach to human rights, especially third-generation rights, and the suppression of dissent by equating dissenters with harmful foreign influences, involves continuous

100. Merry, *supra* note 88, at 55.

101. Mikhail Fishman, *Russia's Unstoppable Desire for Change*, MOSCOW TIMES (July 5, 2017, 4:07 PM), http://themoscowtimes.com/articles/russias-unstoppable-desire-for-change-58301 [https://perma.cc/LNG5-W7QZ].

102. Katie Davies & Maria Evdokimova, *I Am Not Afraid to Speak: Russian Online Flash Mob Condemns Sexual Violence*, MOSCOW TIMES (July 11, 2016 12:07 PM), http://themoscowtimes.com/articles/i-am-not-afraid-to-speak-russian-online-flash-mob-condemns-sexual-violence-54519 [https://perma.cc/3P2M-5FD9].

103. *Id.*

104. Valerie Kipnis, *Russian Orthodox Church Responds to Women Who "Are Not Afraid to Speak,"* MOSCOW TIMES (July 14, 2016, 7:32 PM), http://themoscowtimes.com/articles/russian-orthodox-church-responds-to-women-who-are-not-afraid-to-speak-54590 [https://perma.cc/65XS-DTJ5].

105. *Id.*

106. Merry, *supra* note 88, at 57.

107. *Id.*

state support for gender stereotyping.[108] Gender stereotyping is certainly not unique to the Russian context.[109] Myths and gender stereotypes frequently permeate values and laws, especially when it comes to women's capacity for roles other than motherhood.[110] Within the Russian context, gender stereotyping is ubiquitous in public discourse.[111] The Russian state frequently resorts to stereotyping in order to justify the various human rights infringements under the guise of traditional values.[112] Additionally, the state and judiciary continually reinforces popular views regarding women being primarily concerned with motherhood and childrearing, and men being dedicated to providing for the family economically.[113] A good illustration of judicial approaches to gender stereotyping is provided by the case of *Markin v. Russia*.[114]

Konstantin Markin was a Russian military serviceman, serving as a radio intelligence operator.[115] Markin divorced his wife, and they entered into an agreement under which the three children of the marriage would live with Markin.[116] He asked the head of his military unit for three years' parental leave.[117] The head of the military unit rejected Markin's request, because such leave could only be granted to female military personnel.[118] As a male, Markin was entitled to three months' leave.[119] Markin brought proceedings against his military unit before a military court.[120] Once his claim was dismissed, he brought an appeal in front of a military appeals court.[121] The military appeals court upheld the decision of the first-instance court denying Markin parental leave, and stated that Markin's "reflections on equality between men and women . . . [could] not

108. *See* Alexandra Timmer, *Judging Stereotypes: What the European Court of Human Rights Can Borrow from American and Canadian Equal Protection Law*, 63 AM. J. COMP. L. 239, 282 (2015).

109. *Id.*

110. *Id.*

111. G.V. Zhigunova & N.O. Ponomarenko, *Princhiny Nasiliya nad Zhenschinami v Sem'e*, IZVESTIYA VYSSHIKH UCHEBNYKH ZAVEDNIY POVOLZHSKIY REGION, 34 SOC. SCI 137, 140 (2015) (Russ.).

112. *See* Kapustina et al., *supra* note 94, at 5–6, 9.

113. *Id.*

114. *See generally* Oprendeleniye Konstitutsionnogo Sud Rossiyskoy Federastii [Ruling of the Russian Federation Constitutional Court], ROSSIISKAIA GAZETA [Roz. Gaz] Jan. 15, 2009; Markin v. Russia, 2012-III Eur. Ct. H.R.; Markin v. Russia, 2010-I Eur. Ct. H.R.

115. *Markin*, 2012-III Eur. Ct. H.R. at 85.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* at 85.

120. *Id.*

121. *Markin*, 2012-III Eur. Ct. H.R. at 85.

serve as a basis for quashing the first-instance judgment, which [was] correct in substance."[122]

Markin then applied to the Russian Constitutional Court, claiming that the provisions of Russia's *Military Service Act*, concerning the three-year parental leave, were "incompatible with the equality clause in the Constitution."[123] The Russian Constitutional Court, in its judgment of January 15, 2009, rejected his application.[124] The Constitutional Court emphasized the close connection between military service and public interest, and hence the entitlement of federal legislators to place limitations on the civil rights and freedoms of military personnel.[125] The Court further stated that "by signing a military-service contract a citizen . . . voluntarily chooses a professional activity which entails . . . limitations on his civil rights and freedoms inherent in this type of public service."[126]

The Court went on to emphasize that a serviceman under contract is entitled to a leave of up to three months under certain circumstances, the purpose of such leave being to give him time to make arrangements for the care of his child, or to decide whether he wishes to take advantage of an early discharge for family reasons.[127] Finally, the Constitutional Court stated that:

> [o]wing to the specific demands of military service, non-performance of military duties by military personnel *en masse* must be excluded as it might be detrimental to the public interests protected by law. . . . By granting, on an exceptional basis, the right to parental leave to servicewomen only, the legislature took into account, firstly, the limited participation of women in military service and, secondly, the special role of women associated with motherhood.[128]

The Court concluded that, in light of the above reasons, giving differential leave to men and women cannot be regarded as breaching the principles of gender equality established by Article 19, Sections 2 and 3 of the Russian Constitution.[129]

Following the refusal by the Russian Constitutional Court to consider Markin's application, he lodged an application with the

122. *Id.* at 88.
123. *Id.* at 88–89.
124. *Id.* at 89.
125. *Id.*
126. *Id.*
127. *Markin*, 2012-III Eur. Ct. H.R. at 89.
128. *Id.* at 90.
129. *Id.*

European Court of Human Rights (ECtHR).[130] The Chamber of the ECtHR, in its October 7, 2010 judgment, found that there had been a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights in conjunction with Article 8 (respect for private and family life) of the Convention.[131] The ECtHR concluded that the denial of parental leave to Markin was based on both his military status and sex.[132] The ECtHR stated that advancement of gender equality is considered to be a major goal in the member States of the Council of Europe, and thus, states have a small margin of appreciation when it comes to this issue and would need to provide very weighty reasons to justify gender-based differences in treatment.[133] The Court was not convinced by the Russian Constitutional Court's argument that, when it came to parental leave, the difference in treatment between servicemen and servicewomen was justified by the special role of mothers in the upbringing of children.[134] The ECtHR concluded that when it comes to taking care of children during parental leave, both parents are "similarly placed."[135] The Court noted that the "European consensus" towards a more equal sharing of responsibilities for the upbringing of children cannot be overlooked when it comes to this issue.[136] The ECtHR also pointed out that references to "the traditional perception of women as primary child-carers" do not provide sufficient justification for excluding fathers from taking parental leave.[137]

As for Markin's military status, the Court pointed out that military personnel do not automatically waive their rights under the European Convention on Human Rights by virtue of joining the armed forces.[138] The ECtHR was not convinced by the arguments of the Russian Constitutional Court that the extension of parental leave to servicemen would have a negative effect on the fighting power and operational effectiveness of the armed forces.[139] The ECtHR compared the arguments of the Russian Constitutional Court to the argument made in *Smith & Grady v. United Kingdom* regarding the presence of homosexuals in the army, that homosexuals undermine its operational effectiveness.[140] In both cases, there was a lack of

130. *See* Markin v. Russia, 2010-I Eur. Ct. H.R. at 4.
131. *Id.* at 19; *see also Markin*, 2012-III Eur. Ct. H. R. at 102–03.
132. *Markin*, 2012-III Eur. Ct. H.R. at 13–14.
133. *Id.* at 114; *see also Markin*, 2010-I Eur. Ct. H.R. at 13.
134. *See Markin*, 2012-III Eur. Ct. H.R. at 115.
135. *Id.*
136. *Markin*, 2010-I Eur. Ct. H.R. at 14.
137. *Id.* at 15.
138. *Id.*
139. *Id.* at 16–17.
140. *Id.* at 16; *Markin*, 2012-III Eur. Ct. H.R. at 106.

concrete evidence to substantiate such conclusions.[141] Finally, the Court noted that neither gender-based prejudices based on the perception of women as caregivers and men as breadwinners, nor the fact that women were less numerous in the Russian armed forces, justified disadvantaged treatment of servicemen in relation to parental leaves.[142] Finally, the ECtHR noted that the provisions of Russia's *Military Service Act* produced a widespread problem impacting a substantial number of people, and recommended amendments to the *Military Service Act* to put an end to discrimination.[143]

The 2010 decision by the Chamber of the ECtHR prompted a strong response by the chairman of the Russian Constitutional Court, Valery Zorkin. He argued that:

> [the] priority in defining the public interest must reside in the state and its authorities, not international judges . . . . He further challenged the chamber's position that considering women the primary caretakers of small children was just a "gender stereotype." Instead, the special role of mothers in raising their children was supported by contemporary psychology. Zorkin also criticized the chamber's reliance on the earlier decision in *Smith & Grady v. United Kingdom*, which concerned the rights of homosexual men in the army, arguing that the preoccupation of contemporary European lawyers with homosexual rights was taking "grotesque forms" that sometimes turned into a "tragedy."[144]

It is thus not surprising that the Russian government requested that the case be referred to the Grand Chamber of the ECtHR, which issued its judgment on March 22, 2012.[145]

The Grand Chamber of the ECtHR upheld the earlier judgment of the Chamber, and similarly concluded that there had been a violation of Article 14 in conjunction with Article 8 of the Convention.[146] Once again, the ECtHR emphasized the importance of "European consensus" in its decisions.[147] The Strasbourg Court stated that "the advancement of gender equality is today a major goal in the member States of the Council of Europe."[148] Regarding the argument about the special role of women in the raising of children, the Court noted

141. *Markin*, 2012-III Eur. Ct. H.R. at 106.
142. *Id.* at 119.
143. *See id.* at 119–21.
144. Lauri Mälksoo, *International Decisions: Markin v. Russia*, 106 AM. J. INT'L L. 836, 839–40 (2012).
145. *See generally Markin*, 2012-III Eur. Ct. H.R.
146. *Id.* at 126.
147. *Id.* at 103.
148. *Id.* at 114.

a gradual evolution of society towards a more equal sharing of responsibility between men and women for the upbringing of children.[149] The Russian government's characterization of the provisions allowing parental leave for female military personnel but not male military personnel as "positive discrimination" is misconceived.[150] Furthermore, the court noted that the differential treatment was "clearly not intended to correct the disadvantaged position of women in society."[151] Quite the opposite, such a difference in treatment has the effect of perpetuating gender stereotyping and is "disadvantageous both to women's careers and to men's family life."[152] The Court also explicitly rejected reference to prevailing traditions in a country as a justification for the difference in treatment; hence, the perception of women as primarily responsible for providing child care and men primarily as breadwinners cannot be considered a sufficient justification.[153]

The Court was not persuaded by the Russian government's argument that the extension of parental leave to servicemen would compromise the fighting power and operational effectiveness of the armed forces, while the granting of parental leave to servicewomen would not pose similar risks due to women being less numerous in the military.[154] The Russian government failed to present sufficient expert studies or statistical research to justify its claim.[155] While the ECtHR considered that "it may be justifiable to exclude from the entitlement to parental leave any personnel, male or female, who may not be easily replaced" due to the nature of their duties—such as "hierarchical position, rare technical qualifications or involvement in active military actions"—in Russia, the entitlement to parental leave depended solely on the sex of the military personnel.[156] Finally, in relation to the Russian government's argument that Mr. Markin waived his right not to be discriminated against by voluntarily signing a military contract, the Court stated that "in view of the fundamental importance of the prohibition of discrimination on grounds of sex, no waiver of the right not to be subjected to discrimination on such grounds can be accepted as it would be counter to an important public interest."[157] The difference in treatment of servicemen and servicewomen with regards to parental leave could not be

149. *Id.* at 117.
150. *Id.* at 118.
151. *Markin*, 2012-III Eur. Ct. H.R. at 118.
152. *Id.*
153. *Id.*
154. *Id.* at 119.
155. *Id.*
156. *Id.* at 121.
157. *Markin*, 2012-III Eur. Ct. H.R. at 122 (citation omitted).

"reasonably or objectively justified," and thus "amounted to discrimination on [the] grounds of sex."[158]

The case of *Markin v. Russia* makes it clear that in the Russian context, not only is gender stereotyping prevalent in public discourse, but the discourse is also deliberately being shaped by both the Russian state and the Russian courts. A key problem with stereotypes is that they are taken for granted, to the extent that they are almost invisible.[159] Hence, in order to make stereotypes visible, society must engage in a conscious process of naming and exposing said stereotypes.[160] In other words, a conscious shift needs to occur from an excessive focus on women's biological capacity, toward viewing women as "full human beings and equal members of society."[161] In order for such a shift to occur, in addition to explicitly naming stereotypes and examining their underlying assumptions, so-called "private rights" need to be taken seriously by the state, rather than discounted. Conceptualizing women's rights as falling within private life and the private sphere risks creating dangerous private spaces, where women are left alone with no recourse.[162] Thus, explicitly acknowledging the ways in which laws and practices deprive women of choices, control, and dignity is essential to "women's issues" being viewed as rights to be protected and guaranteed, rather than merely moral questions that are part of "traditional values."

One of the ways that gender stereotyping can be recognized is through transformative judicial narratives. Legal reasoning "can expose and target the invidious cycle wherein stereotyping and discrimination perpetuate each other."[163] Courts, especially constitutional courts, are uniquely placed in their capacity either to shape and transform prevailing social attitudes, or to contribute to the perpetuation of violence through the reliance on seemingly neutral legal principles.[164] The Russian Constitutional Court has so far perpetuated the discourse of masculinity through gender stereotyping and insistence on "traditional values" when defining the contours of human rights.[165] The case of *Markin v. Russia* provides a good illustration

158. *Id.*

159. Liiri Oja & Alicia Ely Yamin, *"Woman" in the European Human Rights System: How Is the Reproductive Rights Jurisprudence of the European Court of Human Rights Constructing Narratives of Women's Citizenship?* 32 COL. J. GENDER & L. 62, 67 (2016).

160. *See generally id.*

161. *Id.* at 74.

162. *Id.*

163. Timmer, *supra* note 108, at 239.

164. A.V. Orlova, *"Public Interest," Judicial Reasoning and Violence of the Law: Constructing Boundaries of the "Morally Acceptable,"* 9 CONTEMP. READINGS L. & SOC. JUST. 51, 51 (2017).

165. Alexandra V. Orlova, *Privatizing Homosexuality: Russia's Reassertion of 'Moral Sovereignty' over Gay Rights*, 11:2 HUMAN RIGHTS & INT'L LEGAL DISCOURSE 126 (2017).

of conflicting judicial narratives, with the ECtHR attempting to name and dismantle existing gender stereotypes, and the Russian Constitutional Court actively trying to support and reinforce them.[166] The two major stereotypes that the Russian Constitutional Court relied upon in its reasoning were that women do not play an important role in the military, and that women have a special role associated with motherhood.[167] Hence, the Russian Constitutional Court's reasoning continues to provide grounds for the Russian state to rationalize and justify gender discrimination.[168] The connection between stereotyping and discrimination is key.

In order to effectively address discrimination, various premises of myths and stereotypes about women need to be openly acknowledged and discussed.[169] The case of *Markin v. Russia* illustrates the limited capacity of the Russian Constitutional Court to engage in transformative legal reasoning, as well as its active opposition to the ECtHR's reasoning.[170] Thus, while foreign legal reasoning gets framed as "legal colonialism" by the Russian state, domestic legal reasoning is utilized to maintain a particular version of state masculinity.[171]

B. Entrenching Patterns of Gendered Violence

From the review of the *Markin v. Russia* and Pussy Riot cases, it becomes apparent that the Russian judicial system supports and reinforces the state's politics of masculinity by "evoking traditional notions of family, marriage, and femininity."[172] The politics of masculinity, often actualized through the rhetoric of "traditional values" and presented as resistance to corrupt Western influences, are contributing to the perpetuation of and further entrenchment of patterns of gender violence. One recent troubling development is the February 2017 amendment to s.116 of the *Criminal Code of the*

166. *Compare* Markin v. Russia, 2012-III Eur. Ct. H.R. at 104, *with* Rutland, *supra* note 50, at 581.

167. Marina L. Shelutto, *Realizatsiya Konstitutsionnyh Printsipov Semeinogo Prava v Rossiiskom Zakonodatelstve*, ZHURNAL ROSSIISKOGO PRAVA 56, 58 (2013) (Russ.).

168. Timmer, *supra* note 108, at 284.

169. *Id.*

170. In a way, Russian courts and judges are constrained by pressure from the state and lack of appropriate "checks and balances." The judiciary has engaged in some passive forms of resistance to state's morality politics through the explicit adoption of Western-style reasoning frameworks, such as proportionality analysis. *See* Orlova, *supra* note 165, at 173.

171. Whitmore, *supra* note 81; *see* Orlova, *supra* note 165, at 140; *see also* Dmitri M. Ilyaguev, *Protivorechie Polozhenii Deistvueschego Zakonodatelstva I Konstitutsii Rossiiskoi Federatsii: Voprosy Voinskoi Obyazannosti I Ugolovnoi Otvetstvennosti ili Gendernyi Immunitet*, PROBELY V ROSSIISKOM ZAKONODATELSTVE 37, 40 (2012) (Russ.).

172. Diane Crocker, *Regulating Intimacy: Judicial Discourse in Cases of Wife Assault (1970 to 2000)*, 11 VIOLENCE AGAINST WOMEN 197, 198 (2005).

Russian Federation decriminalizing certain forms of domestic violence.[173] Section 116 deals with physical assault, defined as "battery or similar violent actions, which have caused physical pain but have not amounted to light injury."[174] This provision was one of the few available to prosecute domestic violence.[175] Initially, non-aggravated battery under s.116 was a crime punishable by a fine or restrictions of liberty.[176] In 2015, a bill decriminalizing non-aggravating battery was introduced by the Russian Supreme Court as part of a broader effort to liberalize Russian criminal law, and reduce the number of imprisoned individuals.[177] However, the Supreme Court's bill was amended after its first reading in the lower house of Russia's legislature—the State Duma—to state that battery of "close persons" (i.e., domestic violence) would not be decriminalized and would remain punishable under s.116 of the Criminal Code.[178] The feminist lobby was "blamed" for this amendment, "carving out" the exception for certain forms of domestic violence.[179] The Russian conservative lobby, headed by Duma deputy Yelena Mizulina (who also successfully lobbied for the passage of a law banning so-called "gay propaganda"), claimed that criminalizing domestic violence not resulting in injuries, was a measure that could potentially criminalize actions of parents who hit their children as part of discipline, while individuals inflicting similar harm on strangers would not be criminally liable.[180] Mizulina stated, "[y]ou don't want people to be imprisoned for two years and labeled a criminal for the rest of their lives for a slap."[181] The conservative lobbyists viewed criminalization of domestic violence as governmental intervention into family life and private matters.[182] Hence, in February 2017, s.116 of the Russian Criminal Code was amended

173. Federal'nyi Zakon o vnesenii izmeneniya v stat'yu 116 Ugolovnogo kodeksa Rossiyskoy Federatsii [Federal Law on Amending Article 116 of the Criminal Code of the Russian Federation], ROSSIISKAIA GAZETA [ROS. GAZ.] Feb. 7, 2017.

174. *Id.*

175. Nerses Isajanyan, *Russian Federation: Decriminalization of Domestic Violence*, LAW LIBR. CONGRESS 1, 2 (June 2017).

176. *Id.* at 3.

177. *See* Decision of the Plenary Meeting of the Supreme Court of the Russian Federation No. 37, July 31, 2015.

178. However, the Supreme Court's bill was amended after its first reading in the State Duma to state that battery of "close persons" (i.e., domestic violence) would not be decriminalized and would remain punishable under s.116 of the Criminal Code. Isajanyan, *supra* note 175, at 3.

179. Isajanyan, *supra* note 175, at 3.

180. Feliz Solomon, *Vladimir Putin Signed Off on the Partial Decriminalization of Domestic Abuse in Russia*, TIME (Feb. 8, 2017), http://time.com/4663532/russia-putin-decriminalize-domestic-abuse [https://perma.cc/8RWM-43JY].

181. Daria Litvinova, *If He Beats You, It Means He Loves You*, MOSCOW TIMES (Aug. 5, 2016), http://themoscowtimes.com/articles/if-he-beats-you-it-means-he-loves-you-54866 [https://perma.cc/K2D5-KESF].

182. Isajanyan, *supra* note 175, at 4.

to remove the following language: "battery of close persons that resulted in physical pain but did not inflict harm or other consequences" from the purview of criminal law.[183] As a result of the 2017 amendments, only aggravated battery, repeated battery, or battery that results in harm to the victim's health, remain criminally punishable.[184]

Domestic violence that does not result in injuries was relegated to an administrative offence, and could be prosecuted through "private prosecutions," leaving the victim responsible for collecting evidence and bringing the case forward.[185] Repeated offences do remain criminalized; however, if a person commits the same crime after a year has passed, that crime would be construed as an administrative offense.[186] Vyacheslav Volodin, the speaker of the Duma, stated that the purpose of the bill was to help build "strong families."[187] While official statistics on domestic violence are not kept in Russia,[188] according to the Russian Ministry of the Interior, forty percent of violent crimes happen within the family,[189] with women accounting for seventy-four percent of Russia's victims.[190] According to some estimates, approximately 14,000 Russian women die annually due to domestic violence.[191] While the deaths of 15,000 Soviet soldiers during the Afghan war is considered to be a national tragedy, no similar public outcry exists when it comes to gender violence.[192]

Russia's #IAmNotAfraidToSpeak flash mob demonstrated not only the ever-prevalent nature of gendered violence, but also the fear of allowing corrupt police and the judiciary to handle such cases, as law is frequently viewed by victims "as a tool of repression rather than of liberation."[193] Thus, instances of domestic violence are frequently not reported to the police.[194] In turn, patterns of violence are

183. *Id.*

184. *Id.*

185. Surya Rajkumar, *The Regressive Russian Amendment*, LSE HUM. RIGHTS BLOG (June 5, 2017), http://blogs.lse.ac.uk/humanrights/2017/06/05/the-regressive-russians-amendment [https://perma.cc/4QL6-MPZT].

186. *Id.*

187. *The Duma's War on Women: Why Russia is About to Decriminalise Wife-Beating*, ECONOMIST (Jan. 28, 2017), http://www.economist.com/europe/2017/01/28/why-russia-is-about-to-decriminalise-wife-beating [https://perma.cc/T2WL-FAWE] [hereinafter *The Duma's War on Women*].

188. Irina V. Soshnikova & Vladimir I. Sherpaev, *Nasilie—Sotsial'naya Opasnost' Sem'i*, 5 IZVESTIYA URAL'SKOGO GOSUDARSTVENNOGO EKONOMICHESKOGO UNIVERSITETA 137, 137 (2012) (Russ.).

189. *The Duma's War on Women*, *supra* note 187.

190. Solomon, *supra* note 180.

191. Dianne Post, *Women's Rights in Russia: Training Non-Lawyers to Represent Victims of Domestic Violence*, 4 YALE HUM. RTS. & DEV. L. J. 135, 136 (2001).

192. *Id.*

193. *Id.* at 146; *see also The Duma's War on Women*, *supra* note 187.

194. S.S. Darenskikh, *Semeinoe Nasilie v Otnoshenii Zhenschin*, 2 IZVESTIYA ALTAISKOGO

established and legitimated,[195] in part due to the state's refusal to take active measures to prevent and prosecute such violence.[196] This structural nature of gender violence is further reinforced through state policies (such as amendments to decriminalize domestic violence that do not result in physical injuries), the media, and the education system.[197] The decriminalization of certain forms of domestic violence means that the gap between real and reported violence will grow even more.[198]

Violence against women is certainly not a new phenomenon in Russia.[199] However, during Soviet rule, this issue was relegated to the private realm, and was classified as a "family affair," not fit for public debate.[200] In view of the formal gender equality proclaimed by the Soviet state, to admit that domestic violence posed a serious issue, would challenge certain underlying premises of communism.[201] Some of the more egregious cases of domestic violence were typically prosecuted under the offense of hooliganism.[202] Using the charge of hooliganism allowed for simple policy explanations, such as alcohol dependence and crowded living conditions, to address the issue of why domestic violence was taking place, while ignoring the structural conditions of patriarchy and gender discrimination.[203] In today's Russia, when it comes to domestic violence, police only get involved in the most severe instances of physical violence, discounting all other instances.[204] Women are frequently blamed for provoking such violence, and are relegated to the category of victims less deserving of protection, as opposed to children and the elderly.[205] Hence, as in Soviet times, despite greater public awareness of gender

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GOSUDARSTVENNOGO UNIVERSITETA 52 (2013) (Russ.); *see also* Aleksei M. Badonov, *Domashnee Nasilie Kak Instrument Vlasti v Sem'e*, 2 VLAST 11 (2017) (Russ.).

195. Soshnikova & Sherpaev, *supra* note 188, at 138.

196. *See* Badonov, *supra* note 194, at 111.

197. Marina A. Laktionova, *Gendernoe Nasilie Kak Sotsiokulturnyi Fenomen: K Postanovke Problemy*, 4 VESTNIK MAIKOPSKOGO GOSUDARSTVENNOGO TEHNICHESKOGO UNIVERSITETA 10 (2010) (Russ.).

198. Anastasia Manuilova, *Nine Months after New Domestic Violence Law, Russian Women Still Struggle*, MOSCOW TIMES (Nov. 24, 2017 5:11 PM), http://themoscowtimes.com/articles/nine-months-on-russian-women-grapple-with-new-domestic-violence-laws-59686 [https://perma.cc/VEJ3-653D].

199. Post, *supra* note 191, at 135.

200. *Id.* at 135–36.

201. Marianna Muravyeva, *Bytovukha: Family Violence in Soviet Russia*, 8 ASPASIA 93, 93 (2014).

202. *Id.* at 97.

203. *Id.* at 100, 109.

204. *See id.*

205. Andrew Stickley et al., *Risk Factors for Intimate Partner Violence Against Women in St. Petersburg, Russia*, 14 VIOLENCE AGAINST WOMEN 483, 484 (2008); *see also* T.E. Schenina, *Nasilie v Sem'e: Chastnoe Delo ili Sotsial'naya Problema*, 2 VESTNIK UDMURTSKOGO UNIVERSITETA 219, 219 (2008) (Russ.).

violence in general, and domestic violence more specifically,[206] domestic violence is still "privatized" and conceptualized as a "family affair" by the authorities.[207] Russian research dealing with domestic violence, in a similar vein to Soviet research, also tends to concentrate on immediate precipitating factors of gender violence, such as alcohol abuse and living in crowded conditions, rather than engage in an examination of deeper structural factors.[208] Even more troubling, surveys of attitudes toward domestic violence have found that males in the eighteen to thirty age category demonstrate significant support of a husband's right to use violence within the family.[209] Such tolerant attitudes toward domestic violence are in part a response to a "patriarchal-nationalist upsurge that espouses the return of women to the home, and a renewed stress on women's 'natural predestination' as wives and mothers."[210]

It is clear that the Russian state's lack of comprehensive action towards cases of gender violence "fosters an environment of impunity" and promotes the perpetuation of violence against women.[211] Moreover, regressive legislative measures, such as the amendment to s.116 of the Russian Criminal Code, and the 2013 federal anti-gay propaganda law, as well as sustaining gender stereotyping and discouraging female dissenters through judicial reasoning, effectively sanction the continuation of violence and perpetuation of structural barriers to gender equality.[212] The Russian state's failure to protect women from violence constitutes a form of gender discrimination, and arguably "denies women their right to equality before the law," as well as violating their right to life.[213] Ultimately, gender violence is about more than its immediate impact on individual women or punishment for individual perpetrators. A deeper re-examination of the impact of Russia's politics of masculinity has to take place within the framework of human rights protections.[214]

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206. *See* Andrew Stickley et al., *Attitudes Toward Intimate Partner Violence Against Women in Moscow, Russia*, 23 J. FAM. VIOLENCE 453, 453 (2008) [hereinafter *Intimate Partner Violence*].

207. *See* Schenina, *supra* note 205, at 223.

208. Stickley et al., *supra* note 205, at 489–90; *see also Intimate Partner Violence*, *supra* note 206, at 454.

209. *Intimate Partner Violence*, *supra* note 206, at 454; *see also* Stickley et al., *supra* note 205, at 492.

210. *Intimate Partner Violence*, *supra* note 206, at 454 (citation omitted).

211. Jennifer Koshan, *State Responsibility for Protection Against Domestic Violence: The Inter-American Commission on Human Rights Decision in Lenahan (Gonzales) and Its Application in Canada*, 30 WINDSOR Y.B. ACCESS JUST. 49, 49 (2012).

212. *See id.*

213. Megan Louise Pearce, *Gendering the Compliance Agenda: Feminism, Human Rights and Violence Against Women*, 21 CARDOZO J.L. & GENDER 393, 406 (2015).

214. *See* Koshan, *supra* note 211, at 61; *see also* Diana Udalova v. Russia, 2010-I Eur. Ct. H.R. at 3.

CONCLUSION

The Russian state's deliberate pursuit of the politics of masculinity, steeped in gendered discourses and designed to uphold and perpetuate gender stereotypes and silence dissenting voices, not only has the effect of sanctioning violence against women but also serves to reinforce numerous structural barriers that continuously relegate women into the private sphere. Constant emphasis on the role of women as wives and mothers is designed to perpetually focus on women's biological capacity, and thus relieve the state from its obligation to consider gender equality seriously and to enforce women's rights, rather than treat those rights as "moral choices."[215] The Russian state has actively suppressed or deliberately discredited feminist dissenting voices, especially when those voices aim to serve as "translators" of Western feminist values by vernacularizing those values for a Russian audience.[216] Social movements have the potential to influence state decision-making processes regarding which rights should be recognized and when such a recognition should occur. Not surprisingly, authoritarian states tend to suppress dissenting social movements when the state's intent is to deliberately deny certain rights, such as gender equality.[217] Connecting domestic dissent to broader international support for women's rights could increase women's vulnerability, given the misogynist backlash it may trigger.[218] The women of Pussy Riot were cynically used by the Russian state to illustrate the state's intolerance for Western human rights campaigns and Russian human rights activists who engage in them. Thus, without the state's backing, feminist ideas and ideals will remain just that. Ultimately, what many Russian feminist movements fail to demonstrate is that creative forms of women's activism are not expressions of "Westernization," but rather of "the universal right of women to engage in self-expression."[219]

In the long run, the realization of rights, including gender equality, rests on their public acceptance.[220] Formalized legal norms, even if they are constitutionally enshrined, can be largely disregarded and disobeyed, especially when both the state and the judiciary are deliberately perpetuating gender stereotyping and genderized discourses as part of their politics of masculinity directed at the West.

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215. Oja & Yamin, *supra* note 159, at 74.
216. *See* Pushkareva & Zolotukhina, *supra* note 28, at 79.
217. Basu, *supra* note 41, at 205.
218. *Id.* at 208.
219. *Id.* at 216.
220. *See id.* at 217.

In other words, setting something out as a legal norm does not automatically translate into a "real rule" that is popularly accepted.[221] Therefore, to prevent and respond to violence against women, as well as to combat entrenched gender stereotyping and the state's resistance to change, measures "must go beyond the state to the private sphere" to address "deeply entrenched social and cultural norms, institutionalized in the law and political structures and embedded in local and global economies."[222] Development of new "local norms" based on gender equality has to take place at the local level, since local norms can be both "paths to change as well as barriers."[223] However, in order for these new local norms to take root, the role of "translators," such as civil society and domestic activists, cannot be underestimated.[224] In the specific context of Russia, such work of "translation" is continuing to prove difficult and is highly discouraged by the state. That said, dissenting voices do continue to accumulate, as illustrated by the "#IAmNotAfraidToSpeak" movement, and hopefully will be able to achieve local critical mass. What is desperately needed in Russia is sustained opposition constantly challenging the ideology of masculine dominance and connecting these challenges to broader human rights principles.[225] However, while human rights law has the potential to break down the "otherness" of categories, challenging the heterosexual nature of marriage and women's positioning as "caretakers,"[226] the role of law, and specifically human rights law, appears to be limited in the current Russian situation. Overall, "[g]iven the reality of male dominance in state and international institutions, and the manner in which male traits underpin state relations, it is hardly surprising that the state is implicated in the maintenance of power structures that continuously reinforce the oppression of women."[227] In order to advance gender equality, the Russian state will need to deliberately cede some of its power and account for dissent, which it seems to be unwilling to do at this moment in time.

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221. Catharine A. MacKinnon, *Creating International Law: Gender and Leading Edge*, 36 HARV. J.L. & GENDER 105, 116 (2013).

222. Pearce, *supra* note 213, at 398 (footnote omitted).

223. *Id.* at 432 (footnote omitted).

224. *Id.* at 439.

225. Melanie Randall & Vasanthi Venkatesh, *The Rights to No: The Crime of Marital Rape, Women's Human Rights, and International Law*, 41 BROOK. J. INT'L L. 154, 201–02 (2015).

226. *See* Sandland, *supra* note 87, at 206.

227. Pearce, *supra* note 213, at 423 (footnote omitted).