NOTES FROM A NEW UNDERGROUND: THE INTERSECTION OF RUSSIAN ORTHODOXY, RELIGIOUS LIBERTY, LGBT RIGHTS, AND STATE AUTHORITY

JOHN S. EHRETT*

I. INTRODUCTION

Liberal democratic societies exist in a state of ideological tension, in which foundational notions of public order must coexist with freedom of dissent. Preserving a middle ground demands constant vigilance and births civic controversies: out of such tension emerged the modern concept of pluralism. ¹ In a pluralistic regime, the public square serves as the crucible in which ideas are shaped, refined, and tempered.

In the United States, questions surrounding the extent of pluralism have been the fuel of countless jurisprudential battles. ² One principle, however, has generally emerged from such challenges. Though limited restrictions may be placed on certain types of expressive activity, the government will almost never intervene to suppress public discourse. ³ No matter how esoteric

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* The author is a Juris Doctor candidate at Yale Law School.

¹ See, e.g., Van Orden v. Perry, 545 U.S. 677, 730 (2005) (Stevens, J., dissenting) (describing “continuing expansion of religious pluralism and tolerance” in the U.S.); Brown v. Hartlage, 456 U.S. 45, 56 (1982) (“[O]ur tradition of political pluralism is partly predicated on the expectation that voters will pursue their individual good through the political process, and that the summation of these individual pursuits will further the collective welfare.”).


one’s religion, or how eclectic one’s political ideology, the state will generally refrain from outright interference.\(^4\)

This principle, however, is not universally upheld, even among states professing adherence to pluralism. Over two decades after the formal disestablishment of the Soviet Union, the Russian Federation has recently taken two internationally unpopular stances evoking historic patterns of regulation of dissent.\(^5\) Most recently, the Russian Federation has been targeting religious critics\(^6\) and those expressing public support for lifestyles encompassed by lesbian, gay, bisexual, and transgender (“LGBT”\(^7\)) persons. Relatively unique among emerging democracies, modern Russia is a nation whose notions of civic order are contextually grounded in both a strict sense of public

\(^4\) See, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 543 (1993) (“The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause.”); Terminiello v. City of Chicago, 337 U.S. 1, 4 (1949) (“[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”).

\(^5\) See, e.g., Jason M. Breslow, What Is the State of Dissent in Vladimir Putin’s Russia? PBS FRONTLINE, Jan. 13, 2015, http://www.pbs.org/wgbh/pages/frontline/foreign-affairs-defense/putins-way/what-is-the-state-of-dissent-in-vladimir-putin’s-russia/ (“Russia has never been the friendliest environment for political dissent, and . . . the situation has only grown more challenging. Since that time, Russia has raised fines for taking part in unauthorized protests, tightened state control over the media and non-governmental organizations and cracked down on opposition websites.”).


\(^7\) “LGBT” is hereinafter used as the acronym encompassing individuals identifying as lesbian, gay, bisexual, and transgender. Due to the ongoing evolution of this acronym in light of developments in the study of sexual orientation/gender identity, the term is to be understood expansively.

morality and a history of centralized political control. Accordingly, a broad historical-cultural approach must be employed when assessing ideological trends.

This Note will argue that a number of recent political measures taken by the Russian government exemplify parallel tendencies towards both restrictions on minority-group civil rights and politically centralized control of social discourse. These measures, restricting both religious freedom of minority groups and the expressive rights of those within the Russian LGBT community, are accelerated by Russia’s historical pattern of church-state integration. The nexus of confluence between religious rights and LGBT rights is of particular theoretical importance, due to historic antagonism between the advocates of each principle. Moreover, the Russian government has justified its anti-LGBT stance by drawing on distinctly Russian socio-religious enthymemes. It will be demonstrated, however, that, contrary to the Russian state narrative, defenders of both religious freedom and LGBT rights in Russia may share a common cause: promoting the free dissemination of ideas that address essential aspects of human nature. Contrary to media reports that suggest inevitable mutual hostility, both factions now have a unique opportunity to collaborate toward the advancement of this shared ideal.

In formulating the argument that a common cause exists between these two groups, in light of prevailing trends toward both increasing caesaropapism and political authoritarianism, several

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9 See discussion infra Part III; see generally WILLIAM ZIMMERMAN, RULING RUSSIA: AUTHORITARIANISM FROM THE REVOLUTION TO PUTIN (2014), at 1-13 (giving a broad overview of sub-trends within general Russian authoritarian tendencies).

10 See infra Part III.


12 See infra Part III.

13 See infra Part III.

considerations are essential: (1) the specific actions taken by the contemporary Russian regime which have given rise to controversy, and their implications; (2) the precedential framework for Russian administrative co-optation of religious discourse in the service of a political end; (3) the ongoing clash between religious organizations and LGBT groups over the legal issues in question, which may in fact obscure areas of shared paradigmatic commitment; (4) the implications of this ongoing debate for international obligatory regimes and treaty standards; and (5) the suggestion of a suitable domestic policy framework with which the issues in question may be addressed. It may be that advocates of both religious freedom and fully realized expressive freedoms for the LGBT community can unite around a holistic approach to civic pluralism and fundamental human rights in the Russian Federation.

Careful evaluation of Laws 136-FZ and 135-FZ, which restrict speech deemed offensive to religious feelings and speech deemed “propagandistic” regarding LGBT lifestyles, respectively, requires analysis of both current and past aspects of the Russian sociopolitical experience. Specifically, this Note advances three interrelated conclusions:

1. Historical. The recent increased tendency towards synthesis between church and state effected within Vladimir Putin's Russia may have emerged from political considerations similar to those present during the rapprochement of World War II, in which Joseph Stalin reversed patterns of antagonism toward the Russian Orthodox Church for the political purposes of the Soviet Union.

2. Legal. Both religious- and sexual-minority groups within Russia—organizations traditionally opposed to one another within liberal-democratic civil societies—face similarly restrictive limitations on freedom of expression under Putin, restrictions both characterized by far-reaching implications and potentially derived from social/geopolitical considerations that echo those present during the rapprochement.

3. Theoretical. Both of these minority groups may conceivably derive substantial benefit from a

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15 See discussion infra Part VI.
broader baseline vision of civic pluralism that transcends areas of ideological disagreement.

II. RECENT DEVELOPMENTS IN RUSSIAN LEGISLATION

Emergent controversies over expressive freedom in the Russian Federation stem from two pieces of legislation passed in late June 2013 by the Russian Duma: Federal Law No. 136-FZ and Federal Law No. 135-FZ. These laws are often colloquially termed “the blasphemy law” and “the anti-gay law” by Western media; as one might reasonably expect, both have garnered criticism—to some extent, however, grounded in surface-level misunderstandings—from outside observers. Accordingly, a systematic evaluation of the laws in question must undergird any discussion of their consequences. This part will seek to provide such an evaluation, correct a number of ongoing popular misconceptions, and offer an overview of the possible political rationale underlying both legislative acts.

A. LAW 136-FZ

International debate continues to rage regarding the possible implications of Russia’s Federal Law No. 136-FZ of June 29, 2013, on “Amending Article 148 of the Russian Criminal Code and Certain Legislative Acts of the Russian Federation in order to counter the actions offending religious beliefs and feelings of


citizens,” (“Law 136-FZ”).20 This law emerged in the wake of a controversial 2012 incident, in which Russian dissident musical group Pussy Riot performed an unauthorized “performance art” routine.21 Specifically, a profanity-laced “punk prayer” containing a call for the Virgin Mary to expel Vladimir Putin from office—in the Christ the Savior Cathedral, one of Moscow’s most revered sites.22 Law 136-FZ was the fruit of the ensuing public outcry.23

Law 136-FZ, following in the footsteps of a 2000 “anti-extremism” Russian law,24 levies financial sanctions against individuals found responsible for “disrespecting” the religious traditions of Russia’s historic faiths. Critically, implicit in this legislative proscription is both a certain subjective dimension and an identification of particular “historical” religions which are to be granted greater legal protection than others. As the Institute on Religion and Public Policy details, “The draft Blasphemy Law seeks to amend existing Russian codes of law, particularly the Criminal and Administrative codes, to include legal penalties against individuals found to have affronted the rites and ceremonies of groups whose religions are an integral part of the historical heritage of Russia.”25 Amnesty International goes on to explain the penalties for any violation:

The law criminalizing blasphemy which came into force today imposes fines of up to RUB 500,000 (over USD 15,000) and up to three years of imprisonment for public actions which disrespect or insult the religious beliefs of people in places of worship. If committed elsewhere, the offence carries up to a year of imprisonment and fine of up to RUB 300,000 (USD 9,000).26

20 See Law 136-FZ, supra note 16.
22 Id.
23 See Sineva, supra note 6.
24 Id.
25 Id.
The Institute goes on to express concern that “[t]he term ‘blasphemy’ has no definitional basis in the legal system of the Russian Federation, a country with a wide spectrum of ethnicities, confessions and beliefs.”27 This lack of definition, in turn, has the possibility of compounding upon the over-breadth of past restrictions on religious speech, as the International Religious Freedom Roundtable notes:

The [Russian] federal government continues to allow the use of an expansive definition of “extremist activity” to include religious writings that imply superiority of one’s religion to another, or that express opposition to moral and ethical shortcomings in society. Any local prosecutor can push for such religious works to be found “extremist.”28

Accordingly, these two laws together suggest a politicized understanding of “religious tolerance” in Russia: those faith communities with the greatest judicial clout are afforded substantial potential leeway in determining both what constitutes “extremist activity” and what constitutes “disrespect,” due to the imprecision of the statutes in question.29

Western nations—whose constitutions generally adopt a broader vision of freedom of speech and expression—have been loath to adopt blasphemy laws comparable to Russia’s.30 Benedict Rogers, Deputy Chair of the Conservative Party Human Rights Commission in the United Kingdom, explicates the theoretical principle undergirding such reticence:

In the course of thinking, questioning, exploring, it is legitimate—indeed essential—to ask probing

27 Sineva, supra note 6.
29 See id.
questions of religions and beliefs, our own and others. . . It cannot be the business of government
to determine blasphemy and heresy, let alone to
legislate against them. Religious teachers can teach
and preach about them, but politicians should not
outlaw them. An open society consists of open
minds and, whether we like it or not, open mouths
too.31

Thus, in Rogers’ framework, the very act of establishing a legal
definition of “blasphemy” is an act against the principles of
democratic pluralism, which cannot meaningfully coexist with
state-enforced religious doctrines—or those doctrines whose
relative value is determined by those in positions of power.32 He
further proceeds to explain the practical basis for concern over
laws similar to Russia’s:

There are several problems with blasphemy laws. In
most cases the “crime” is very poorly defined. . . .
As a result, many blasphemy charges turn out to be
completely false. The law is used to settle personal
or commercial scores that have nothing to do with
religion. The accused never even said or did
anything offensive—the blasphemy law is simply
used as a convenient tool for a vindictive adversary.
There is typically no proof of intent.33

Thus on a pragmatic legal basis alone (particularly when coupled
with the dearth of a statutory definition of “blasphemy”), Law 136-
FZ lays the groundwork for judicial proceedings motivated more
by ideological distaste than by concerns over public order.34
Avenues for prosecuting vandalism and disorderly conduct already
exist.35 Accordingly, if merely “maintaining the peace” were the
foremost concern, there would appear to be no pressing need to

31 Benedict Rogers, Blasphemy May Be Offensive, But Blasphemy
Laws Kill, THE HUFFINGTON POST - UNITED KINGDOM (July 10, 2013),
http://www.huffingtonpost.co.uk/ben/blasphemy-laws_b_3560615.html.
32 See id.
33 Id.
34 See id.
35 See, e.g., Russia Pursues Vandalism Charges Over “Offensive”
Anti-Putin Graffiti, AGENCE FRANCE-PRESSE, (July 20, 2013),
http://www.hurriyetdailynews.com/russia-pursues-vandalism-charges-
over-offensive-anti-putin-graffiti.aspx.
The law as it stands, however, would seem to suggest that certain belief systems are more highly favored than others, a contention not without supporting precedent in the Russian historical experience, as subsequent parts will observe, but a tendency which contravenes the international normative structure to which Russia has acceded via past treaties.

B. LAW 135-FZ


Contrary to the majority of popular perceptions, however, the uniquely controversial aspects of this legislation are not found in its direct effects upon LGBT persons, but rather in its convergence with other limitations of expressive freedom: specifically, Law 135-FZ targets the following category of expressive activity for legislative censure:

[P]romotion of non-traditional sexual relationships among minors expressed in the dissemination of information aimed at forming of non-traditional sexual orientation, attractiveness of non-traditional sexual relationships, distorted interpretation of social equivalency of traditional and non-traditional sexual relationships or touting of information on

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36 See id.
37 See infra Part II; Parts IV-V.
39 Id.
non-traditional sexual relationships that attracts interest to such relationships in minors.\footnote{See Law 135-FZ, supra note 17.}

Amnesty International’s analysis summarizes the penalties for unauthorized conduct under the statute: “[The law] includes penalties of up to RUB 5,000 (USD 150) for individuals, up to 10 times that for officials, and up to RUB 1,000,000 (over USD 30,000) as well as possible three-month suspension of activities for organizations.”\footnote{Russia: New Laws an Affront to Basic Human Rights, supra note 26.}

The law is not without popular support, given that mainstream Russian culture is characterized by widespread antagonism towards LGBT persons and activities: official poll data released by the All-Russian Public Opinion Center (“VTSIOM”) indicates that “88 per cent of Russians supported the amendments to the law. Only 7 per cent said they are against. Some 54 per cent said homosexuality should be banned and face criminal liability.”\footnote{RT News, Putin Signs “Gay Propaganda” Ban and Law Criticizing Insult of Religious Feelings, RT NEWS (June 30, 2013), http://rt.com/politics/putin-law-gay-religious-457/.}

In light of falling birthrates in Russia\footnote{Fred Weir, Putin Vows to Halt Russia’s Population Plunge with Babies, Immigrants, CHRISTIAN SCIENCE MONITOR (Feb. 14, 2012), http://www.csmonitor.com/World/2012/0214/Putin-vows-to-halt-Russias-population-plunge-with-babies-immigrants.} and other expressions of social malaise, Putin and other legislators may point to trends in popular opinion as a supposedly compelling justification for Law 135-FZ. It is, in turn, easy for organs of the government establishment to portray LGBT Russians as participatory in ongoing civic ills, whether or not this portrayal is grounded in fact:

In July, the Moscow department of the FSB, Russia’s secret police, placed homosexuality within a perceived foreign conspiracy to overthrow the Russian government. The FSB report read: “The spread of the idea of homosexuality…is all the more widespread. According to our operational data, groups of people counting themselves among sexual minorities . . . actively employ the special services and organizations (including NGOs) of foreign governments, to realize projects with destructive
goals. In particular, it was recently noted that the active participation of said people in the staging of protests (including the May 6, 2012 protest on Bolotnaya square in Moscow) that sought to harm the Russian Federation.\footnote{44}

International critics have, at times, obviated important nuances surrounding Law 135-FZ. Same-sex sexual activity was decriminalized in Russia in 1993 following the collapse of the Soviet Union;\footnote{45} the law in question deals exclusively with the provision of a certain category of information to minors. This seemingly narrow speech restriction—although a restriction fraught with far-reaching implications—has been incorrectly conflated with outright state-sponsored persecution. In the words of American talk-show host Jay Leno: “Suddenly, homosexuality is against the law. I mean, this seems like Germany: Let’s round up the Jews. Let’s round up the gays. Let’s round up the blacks. I mean, it starts with that.”\footnote{46} Sean Guillory, writing in The Nation, corrects this misunderstanding and offers a clarifying perspective:

Given the international outcry against the law, including hyperbolic comparisons to Nazi Germany, it’s somewhat surprising how sparingly it’s been used. No organization has been prosecuted yet. So far there have been only a handful of cases involving individuals. And most of these concern gay activists who’ve purposely violated the law to challenge it in court. In 2009, two activists, Nikolai Baev and Irina (Fet) Fedotova, were convicted of violating Ryazan’s gay propaganda law for holding a sign reading “Homosexuality Is Normal” and “I Am Proud of My Homosexuality” outside a school.\footnote{47}


\footnote{46} Herszenhorn, supra note 19.

\footnote{47} Guillory, supra note 44.
Complaints over journalistic imprecision aside, however, Law 135-FZ unquestionably sets forth a legislative precedent that, alongside Law 136-FZ, suggests a trend towards greater restrictions on civil and political rights.\textsuperscript{48} Attorneys for Alliance Defending Freedom, Roger Kiska, Daniel Lipsic, and Paul Coleman point out that the “over-breadth of the law in general, meaning all of its provisions (among them the prohibition of propaganda regarding non-traditional sexual relationships with an aim to corrupting minors), does raise concerns from a free speech perspective.”\textsuperscript{49}

In many liberal democracies, including the United States, community norms, if not de jure legal strictures, limit the accessibility of certain forms of content to minors (i.e. pornography, depiction of extreme violence, etc.).\textsuperscript{50} Accordingly, it is insufficient to indict the Russian LGBT legislation in question without further establishing the nature and problematic extent of its over-breadth.\textsuperscript{51} This over-breadth concern emerges on two fronts: over-breadth of content and over-breadth of communication.

Specifically, this over-breadth emerges from the lack of legal definition of the terms employed—as in the case of Law 136-FZ. As Human Rights First, an organization critical of Law 135-FZ, succinctly explains: “If you ask twenty judges to explain what it means to disseminate ‘information on nontraditional sexual relations,’ you’ll likely get twenty different responses…Without a legal definition of ‘propaganda,’ ‘distributing information,’ or ‘nontraditional sexual relations,’ the article’s interpretation is left to the police and the courts.”\textsuperscript{52} In practice, Russian authorities have apparently elected not to interpret Law 135-FZ with particularly great latitude.\textsuperscript{53}

\textsuperscript{48} Kiska et al., supra note 38.

\textsuperscript{49} Id.

\textsuperscript{50} Cf. American Library Ass’n v. Reno, 33 F.3d 78 (D.C. Cir. 1994) (upholding the constitutionality of regulations placed on producers of pornography where the interests of minors are implicated).

\textsuperscript{51} A meaningful comparison of pluralistic norms demands that circumstantial factors be considered across different legal regimes: in what way, for instance, is Russia’s ban different than a U.S. ban on certain forms of pornography?


\textsuperscript{53} See Guillory, supra note 44.
Speaking to the issue of content-based regulation, the Boston Globe reports that, “[i]n a . . . sinister reflection of Russian reality, four gay rights activists were arrested in St. Petersburg after they unfurled a banner that quoted the ban against discrimination in the Olympic Charter.”\textsuperscript{54} Even more disturbingly, when Russian government officials have actually hinted at some semblance of an administrative definition of these crucial terms, a clear potential has emerged for far-reaching limitations on free expression:

In April 2012, the foreign ministers of the G8 (minus Russia) countries “reaffirmed that human rights and fundamental freedoms are the birthright of all individuals, male and female, including lesbian, gay, bisexual or transgender individuals.” The ministers of the United States, Canada, France, Germany, Italy, Japan, and the United Kingdom said, “These individuals often face death, violence, harassment and discrimination because of their sexual orientation in many countries around the world.” The Russian delegation disassociated itself from the language, citing a footnote and explaining that the foresaid [sic] acknowledgement constitutes “aggressive propaganda.” Indeed, under the federal “propaganda” law, a Russian official could now be fined for endorsing statements like the G8 proclamation. If acknowledging violence based on sexual orientation is “aggressive propaganda,” what isn’t?\textsuperscript{55}

The mere recognition that LGBT persons often experience human rights violations is far from a moral or sociological endorsement of particular lifestyles, yet even this acknowledgement of brute fact is deemed to be in violation of Law 135-FZ—a counterintuitive result, and one that appears to stem directly from the intrinsic vagueness of the law against “propaganda.”\textsuperscript{56} If this precedent


\textsuperscript{55} Convenient Targets: The Anti-“Propaganda” Law & the Threat to LGBT Rights in Russia, supra note 52, at 8.

\textsuperscript{56} Whether or not an acknowledgement of the presence of a particular phenomenon is a legitimation of that phenomenon, for
continues, even seemingly anodyne sociopolitical statements—such as “LGBT persons have historically experienced violence, and such acts of violence are condemnable”—may fall within administrative reinterpretations of such an ill-defined “propaganda” proscription, and be deemed corruptive to minors.  

Yet concerns over the vast regulatory potential of Law 135-FZ are not limited to possible regulations on the content of expression. Indeed, given the law’s lack of definition of what precisely constitutes “dissemination of information,” broad proscriptions on certain modes of civic expression are within the realm of possibility. The Council for Global Equality explains this risk, a concern that will be further discussed in later Parts:

Moreover, while the law suggests that only information directed at children should expose an individual or an organization to liability, prosecutions under similar laws in the regions have not dwelled on this nexus to children and the federal law’s heightened focus on the internet, where minors have an opportunity to view such information, suggest that the law could be applied broadly and with little regard to any notion of child protection.

Leaving aside any questions of the nature of such information, and whether or not the Russian government may legitimately seek to regulate it, the vagueness inherent in the legislation risks compromising the ability of individuals to freely make information available online, irrespective of any actual “propagandistic” intention directed at minors. Based on the pattern of court decisions that has emerged thus far, a Russian individual engaged in pro-LGBT civic or political activism online could theoretically, instance, is a question that cannot be answered—even by inference—in light of Law 135-FZ.

57 Convenient Targets: The Anti-“Propaganda” Law & the Threat to LGBT Rights in Russia, supra note 52, at 8.

58 Law 135-FZ, supra note 17.


60 Id.
under an expansive interpretation of the federal law, be punished for promulgating impermissible information to minors.  

Such definitional ambiguity, which naturally results in a ceding of administrative discretion to the Russian judicial establishment, offers the opportunity for political leaders to affirmatively promote a certain vision of “Russia as it ought to be”—particularly in contraposition to external rivals. From the perspective of Russian administrators, non-traditional religious and sexual practices conceivably risk creating cleavages in an otherwise stable and homogeneous national ideal: hence, engaging in targeted restriction of minority group activities offers a means of both shoring up political credibility and limiting the proliferation of dissident viewpoints.

In order to bolster and propagate this ideal, however, the halls of secular and ecclesiastical power must find common ground. This necessity is born from years of tradition reinforcing Russian cultural identification with Orthodoxy: to truly win the hearts of the populace, a leader cannot overlook the uniquely spiritual quantum of the Russian experience. It is to the subject of such an intersection—a resurgent synthesis of interests that eerily echoes one of decades past—that is the issue the subsequent Part turns to address.

III. HISTORICAL ROOTS OF CHURCH-STATE SYNTHESIS IN RUSSIA

Since the days of the tsars, the Russian Orthodox Church has displayed a tendency towards integration into the state political apparatus. At times, this complex and almost codependent relationship has verged on the antagonistic—witness, for instance,

61 See id.
64 See infra Part III.
65 Nicholas Myers, Russian Orthodoxy’s Unreconciled Dualism, FIRST THINGS, (May, 24 2012), http://www.firstthings.com/web-exclusives/2012/05/russian-orthodoxys-unreconciled-dualism.
the persecution of religious believers during particular stages of the Soviet era—66—but on the whole, the Orthodox Church has persistently linked its own fate to that of the regime writ large.67 Lacking institutional buffers comparable to the American “wall of separation” between church and state, the Orthodox Church has historically gravitated toward whoever holds the reins of power.68 In so doing, the Church has evidenced a trend towards allowing its theology to develop according to the needs of state policy—an ideological co-optation by the ruling faction that draws on the Church's historically broad appeal as a means of solidifying political support.70 History suggests that the Putin administration’s recent legislative move away from protection of free expression, in matters of both religion and sexuality, is a resurgent manifestation of this tradition.71

While a certain level of integration between church and state has historically been characteristic of the Russian social experience, not all episodes of this integration are equivalent with respect to both their initial rationale and emergent implications. This variance may be attributed to the external circumstances surrounding particular episodes of uniquely close church-state cooperation. For the purposes of this discussion, analysis will center on those episodes in which such cooperation was accompanied by a demonstrated aim of establishing a particular regime’s political legitimacy in contraposition to outside forces.

66 See generally Paul Gabel, And God Created Lenin: Marxism vs Religion in Russia 1917–1929 (2005) (discussing the clash between Marxists and persons of faith in the early days of the Soviet Union).
68 Cf. Stephen Blank, Russia’s Lurch Toward Fascism, Huffington Post (Apr. 18, 2014), http://www.huffingtonpost.com/stephen-blank/russias-lurch-toward-fasc_b_5169230.html. (“In Russian history, the invocation of the trinity of church, state, and Russian nationalism has historically occurred at precisely those intervals where the state essentially admits that it has nothing to offer anyone and will not reform.”)
69 See discussion infra Part III.
70 Id.
71 See William Zimmerman, Ruling Russia: Authoritarianism from the Revolution to Putin (2014) for a multifaceted survey of this tradition.
During World War II, this occurred through Joseph Stalin’s attitudinal about-face with respect to the Russian Orthodox Church—a rapprochement necessitated by incursions of Nazi military forces into Russian territory, specifically incursions in which invading Germans sought to wrest moral legitimacy away from the Soviet regime by removing barriers to religious practice. Similarly, today the Russian regime seeks to define itself in opposition to a Western society it has cast as decadent and unappealing to Russians who favor traditional moral norms.\(^\text{72}\)

In short, when political objectives are accompanied by a particularly pronounced need to claim the socio-moral high ground, there has been a tendency in some Russian regimes toward an ever-closer fusion of church and state. This fusion carries with it a number of consequences that will be further explored in subsequent parts.

For centuries prior to the Russian Revolution, Russian society was characterized by a tight linkage between civil government and religion—specifically, the Russian Orthodox Church.\(^\text{73}\) The early writings of Vladimir Ilyich Lenin, father of the Russian Revolution, demonstrate (in line with prevailing Marxist sentiment) an unwavering contempt towards this state-synthesized religion. In a 1905 article, Lenin wrote, “We demand complete disestablishment of the Church . . . [W]e founded our association, the Russian Social-Democratic Labour Party, precisely for such a struggle against every religious bamboozling of the workers.”\(^\text{74}\) Notably, however, Lenin suggested that the appropriate counter-religious strategy was marginalization, not outright opposition: “The revolutionary proletariat will succeed in making religion a really private affair, so far as the state is concerned.”\(^\text{75}\) For Lenin, religion was simply a vestigial psychological practice that would die off as communism ascended to supplant it. A sharp division, however, was required between church and state in order to facilitate this transition: this division would go on to be supported

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\(^{73}\) Peter J. S. Duncan, Russian Messianism: Third Rome, Revolution, Communism and After 58 (2002).


\(^{75}\) Id.
or compromised, as circumstances required, by Lenin’s successors. 76

In contrast to Lenin, some Marxist thinkers discussed this existing church/state hybridization without resorting to harsh invective. Friedrich Engels, crucially, “made a distinction between early Christianity (the first three hundred years) and Christianity after it became the state religion under Constantine in the early fourth century. He drew parallels between the suffering of early Christians and those of the modern working class.” 77 The existence of these parallels would later push Stalin’s administration to syncretize socialist political thought with Orthodox civil-religious practices. 78

Upon acceding to power, however, the Bolsheviks adopted a hardline stance towards religious practitioners. At least twenty-eight Orthodox bishops, and thousands of other clergy and believers, were killed during 1918 and 1919. 79 And, as Wassilij Alexeev points out, this situation only grew more precarious for the Church: “The number of open (i.e. functioning) churches decreased considerably, and by 1939 the situation was catastrophic . . . In view of these facts one can assume that the number of open churches in the USSR at the beginning of 1939 was only approximately 2,700, i.e., no more than six percent of the pre-revolutionary figure.” 80

The newly-forged Bolshevik state, however, would soon face a terrifying challenge from the west: specifically, the rise of a rival totalitarian power that was unafraid to embrace and propagate (albeit in a bastardized form) Christian religious iconography. 81

76 See Dzhurnal Moskovskoi Patriarkhii (Journal of Moscow Patriarchate), No. 1 (Sept. 12, 1943), 5, 6, 11, 16 reprinted in A DOCUMENTARY HISTORY OF COMMUNISM IN RUSSIA: FROM LENIN TO GORBACHEV 28 (Robert V. Daniels ed., 1993).
77 GABEL, supra note 66, at 85.
78 Jordan Hupka, The Russian Orthodox Church as a Soviet Political Tool, 2 CONSTELLATIONS 31, 39 (2011).
79 GABEL, supra note 66, at 116.
80 Alexeev, supra note 67, at 29–30.
Jordan Hupka succinctly summarizes the implications of the Nazi onslaught for the Russian church/state relationship:

It was the Nazi invasion of 1941, however, that brought new life to the church. As the German army swept eastward, churches were re-opened to incise the local population to accept their new rulers. This was a great threat to the Soviets, as people in Soviet-held territory long yearned for that freedom. Thus, Stalin was forced to end his attack on religion.\(^{82}\)

The Nazis strategically sought to exploit a critical ideological variance between the Soviet populace and its leadership. By affirming the religious heritage that many Russians still embraced, the invaders attempted to fracture any sense of national consensus or solidarity before it could materialize. The Nazis themselves were no strangers to co-opting elements of the Christian faith into their political and military battlefront.\(^{83}\)

Noted Russian writer Maxim Gorky, in a letter to Stalin, warned against explicit antagonism toward religion on the parts of the Soviet authorities. “You won't achieve much with the weapons of Marx and materialism, as we have seen,” Gorky advised.\(^{84}\) “Materialism and religion are two different planes and they don't coincide. If a fool speaks from the heavens and the sage from a factory—they won't understand one another. The sage needs to hit the fool with his stick, with his weapon.”\(^{85}\) In other words: to attain the ultimate Marxist end, religious ideology had to be controlled and redirected. With the longed-for segue from totalitarianism to pure communism still incomplete, Stalin—more interested in preserving his power than preserving pure Marxist doctrine\(^{86}\)—pragmatically realized that a broad Soviet attack on religion had

\(^{82}\) Hupka, supra note 78, at 39.

\(^{83}\) See generally ERIC METAXAS, BONHOEFFER: PASTOR, MARTYR, PROPHET, SPY (2011) (discussing the conflicts within the German church at the dawn of the Nazi period).


\(^{85}\) Id.

been premature, and ended the systematic oppression of the Orthodox Church in 1943.\(^\text{87}\)

This policy shift, however, did not stop at mere cessation of persecution; it was an outright imprimatur of approval for certain religious institutions, as Hupka subsequently notes: “When the Soviets forced the Germans out, the re-opened churches were absorbed into the Russian Orthodoxy. While the persecution of the Russian Church ended, all other churches were eliminated. As a result, the sole legitimate religious institution was firmly in the grasp of the Soviet government.”\(^\text{88}\) Paradoxically, Stalin’s subsumption of the church into the state bore similarities to the similar synthesis produced by the Roman emperor Constantine centuries before—precisely the phenomenon Engels had condemned.

Stalin’s embrace of Marxist-tinged civil religion\(^\text{89}\) was, all things considered, a calculated decision to shore up the foundations of communism.\(^\text{90}\) In the face of sweeping Nazi attacks, continued religious persecution would not inspire collective national solidarity; a more subtle touch was needed. The great irony of this policy change is clear: for the very purpose of safeguarding the communist Weltanschauung (and an arguably post-religious way of life), a new synthesis of church and state was required. The Russian populace, accustomed to a close relationship between the Orthodox Church and various tsarist regimes, was certainly not unfamiliar with such a fusion; the character of this particular fusion, however would be fundamentally unique, given the newness of the Soviet project.\(^\text{91}\)

A melding of Marxist-style socialism and Christianity was not without intellectual precedent. Strains of what would later be termed “liberation theology” already existed within the Orthodox

\(^{87}\) A DOCUMENTARY HISTORY OF COMMUNISM IN RUSSIA, supra note 76, at 228.

\(^{88}\) Hupka, supra note 78, at 39.


\(^{91}\) See Hupka, supra note 78, at 39.
Church, as Alexander Negrov, rector of the St. Petersburg Christian University, argues:

It is possible to trace the influence of certain Marxist socio-analytical insights within Russian Christianity at the beginning of the twentieth century. . . . For some Orthodox thinkers a Christian [could] be a socialist. . . . He or she ought to desire the socialization of the economy, which would (1) guarantee that every human has the right to work; (2) secure for every human being the possibility of realizing the fullness of life; (3) regulate the community by promoting communication between people on the issue of justice. However, they believed that it is only the Church that is able of itself to create a new man or a brotherly community of people, to create community, communion between people, and the brotherhood of people.92

Negrov goes on to explain that, “Through religious praxis and faith teachings, these Orthodox exegetes and theologians also attempted to connect the suffering of Christ on earth with that of the oppressed and poor in Old Tsarist Russia, using particular references in the gospel.”93

This bears a close parallel to Engels’ own analysis of the church-state relationship. By relying on Christian tropes to justify aspects of the socialist worldview, communism could be reinforced without the negative consequences of overtly attacking religious practice.94 Thoroughgoing Marxists and Russian Orthodox believers alike could, at least in theory, unite around a common social vision, albeit for different reasons. Historian Hiroaki Kuromiya has even speculated that in the postwar era, Stalin might have employed Orthodox parishes as actual vehicles of Soviet ideological expansion.95 This religio-political synthesis is exemplified in a 1947 declaration by Archpriest N. A. Khariuzov: “Moscow is the centre of the social life of humanity, the centre which unites all progressive and democratic elements, and in

93 Id. at 342.
94 Cf. Gorky, supra note 84.
religious life Moscow is not the centre of aristocratically despotic Catholicism or of anarchic Protestantism. Moscow is the centre of true Orthodoxy, rejecting this or that extreme.”

The aforementioned actions led to a win-win scenario for the Soviet regime. With the Orthodox Church in thrall to the Politburo, “obedience to God” could be directly connected with “obedience to government.” This correlation is evidenced by Stalin’s persecution of Catholics, which continued even after the Orthodox rapprochement; Catholics, who by definition owed allegiance to an extraterritorial “spiritual sovereign” in the Vatican, were seen as a threat to Stalin’s aims and subjected to oppression. By fusing the Soviet regime with the Orthodox Church, any element of internal conflict on the part of the individual—any sense of conflicting loyalties between church and state—could theoretically be rationalized away. Thus, Stalin’s relaxation of controls on the Church was, fundamentally, a strategic decision.

Assuredly, such an abrupt reversion to tsarist-era policy (particularly when subsequent to a period of intensive persecution) was fraught with implications. This becomes still more pronounced when the impact of communist-themed liberation theology on the church/state relationship is considered. Contrary to what one might expect, Stalin’s integration (or official toleration) of the Russian Orthodox Church within the Soviet system resulted in a long-term weakening of ecclesiastical influence. Though the Orthodox Church never again lost its stamp of official approval, factors beyond governmental control led to a progressive decline. Alexeev highlights the root cause of this downward spiral:

For all the concessions which the Russian Orthodox Church received during and after the Second World War, the Moscow Patriarchate was obliged to pay the price of complete subordination to the atheistic government of the USSR and to participate in its foreign policy. In this way the Soviet government . . . did everything possible to contain it within the

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96 DUNCAN, supra note 73, at 59.
98 KUROMIYA, supra note 95, at 39 (“The Orthodox Church’s concordat with the Soviet government appeared to many sectarians as a betrayal—in ‘service of the Antichrist.’”).
tightly-controlled body of the Moscow Patriarchate, which had become a tool of the Soviet government in the attainment of its political goals.\textsuperscript{99}

Absent the external pressures of World War II, Nikita Khrushchev and his successors did not share Stalin’s vision for a robust and pragmatic synthesis of church and state.\textsuperscript{100} Philip Walters explains the church/state tension that persisted into the postwar era: “The Soviet government . . . saw fit to enlist the support of the Church for its political aims, but it never became reconciled to the existence within the Soviet Union of religion as a worldview.”\textsuperscript{101} It may be accordingly inferred that the existence of Christianity was tolerated in an exclusively adjectival capacity: “Christian communist,” might be permissible and even praiseworthy, but “communist Christian” would suggest a hierarchy of belief in which communism was considered subsidiary to one’s religious faith. This, presumably, had the net effect of further reducing religious doctrine to a matter of antiquated tradition—a veneer of orthopraxy serving as a substitute for true orthodoxy.

With the legitimacy of the church linked on some level to that of the state, progressive fragmentation of the Soviet system engendered turmoil in the attached Church and a backlash on the parts of individual Russian believers.\textsuperscript{102} Religious scholar Andrew Evans pinpoints the lasting sociopolitical consequences stemming from decades of such integration:

The church-state relationship works both ways. Various political parties use the ROC [Russian Orthodox Church] in order to exploit its solid base of symbolism and to tap into a potentially valuable constituency. In return the ROC, seeking to guard its links with the state in one form or another, finds support all along the political spectrum. Rather than endorse a particular set of values, the ROC itself

\textsuperscript{99} Alexeev, supra note 67, at 34.

\textsuperscript{100} Philip Walters, The Russian Orthodox Church 1945–1959, 8 RELIGION, STATE AND SOCIETY: THE KESTON JOURNAL 218, 222 (1980).

\textsuperscript{101} Id.

\textsuperscript{102} Kuromiva, supra note 95, at 39.
wants to be a value in Russian society.\textsuperscript{103} [Emphasis in original]

This tacit societal compartmentalization of the Orthodox Church stems from its historical interdependence with the state; if the doctrine and character of the Church are impacted by ideological fluctuations within civil government, the Church in turn is led to abrogate its traditional role as an arbiter of absolute moral truth. The Stalin-era reconceptualization of traditional religious themes (suffering, redemption, etc.) in purely humanistic terms resulted in a compromise of the distinctive Orthodox doctrinal character; the mythos found in symbolism itself, rather than the metaphysical concepts encapsulated by such symbols in the first place, became the sociological centerpiece of religious dialogue.\textsuperscript{104} For Putin and other emerging political leaders, the precise character and teachings of the Orthodox faith may or may not be relevant in any socially meaningful way: such religious institutions have historically served a utilitarian purpose in Russian society, and can correspondingly serve as a sort of “national glue” reinforcing cultural solidarity.\textsuperscript{105}

The fundamental lesson that may be derived from observation of this synthesis is relatively straightforward: contemporary Russian history has displayed an ongoing pattern of integration between political and ecclesiastical loci of authority.\textsuperscript{106} In such a symbiosis, particularly as epitomized by the Marxist-Orthodox intellectual convergence Negrov identifies,\textsuperscript{107} authority figures may posit a basis for laws that apparently derive from the enthymematic foundation of the Russian cultural experience.\textsuperscript{108}

Put another way, a Russian leader seeking to advance his political ambition may draw upon the socio-religious elements that

\textsuperscript{103} Andrew Evans, Forced Miracles: The Russian Orthodox Church and Postsoviet International Relations, 30 RELIGION, STATE AND SOCIETY: THE KESTON JOURNAL 33, 35 (2002).

\textsuperscript{104} See generally id. (explaining the gradual breakdown of traditional ecclesiastical norms).

\textsuperscript{105} See Peter Pomerantsev, What Does the Russian Elite Really Believe In? ASPEN INST. (Feb. 2014) [hereinafter Pomerantsev, Russian Elite] (“[T]he Kremlin us[es] the church and religious language for political purposes . . . .”)

\textsuperscript{106} See Alexeev, supra note 67.

\textsuperscript{107} See Negrov, supra note 92.

\textsuperscript{108} See DUNCAN, supra note 73, at 59
pervade modern Russian history; this mutually influential relationship works both ways, given the Orthodox Church’s past willingness to adapt to state norms rather than seeking to shape them.\textsuperscript{109} This differs from the “civil religion” often espoused by politicians in states lacking historical establishments of religion in that caesaropapist authority structures, such as those in Russia, are not merely convergent, but codependent.\textsuperscript{110} Both evolve in order to ensure the persistence of the extant political authority—whether that be a tsarist regime, a Communist state, or a “democracy” in transition.\textsuperscript{111} In such an arrangement, neither church nor state serves to “check” the other.

The following Part will consider how both of Russia’s controversial recent measures—Law 136-FZ and Law 135-FZ—fall within this tradition of intellectual co-optation. Furthermore, it will examine how the Putin administration, in the tradition of its predecessors, has successfully capitalized on persistent fissures in the Russian ideological consciousness. In so doing, the administration has constructed an idealized and politically winsome vision that integrates society and state.

IV. RELIGION, LGBT RIGHTS, AND FREE EXPRESSION

In the course of evaluating patterns of social upheaval in Russia, and before further consideration of how historical patterns of church-state cooperation have lent sociocultural impetus to emerging political dynamics, a brief detailing of the specific philosophical issues under consideration is warranted. To wit: this

\textsuperscript{109} Cf. George Weigel, \textit{Kowtowing to Moscow = Bad Ecumenism}, \textit{First Things} (Dec. 10, 2014) [hereinafter Weigel, \textit{Kowtowing to Moscow}], http://www.firstthings.com/web-exclusives/2014/12/kowtowing-to-moscow-bad-ecumenism (“[The] [o]bstacles to a Church ‘breathing again with both its lungs’ are not going to be resolved by kowtowing to the patriarchate of Moscow and tacitly accepting its dubious “narrative” about the history of Christianity among the eastern Slavs . . . .”).

\textsuperscript{110} Just as the state benefits from the legitimation of its political authority by way of the church, the church reaps material benefits from its affiliation with the state; see infra Parts IV-V.

Part offers a brief theoretical overview of the shared political interest in pluralism held by members of both religious minority groups and representatives of the LGBT community, before exploring how these interests intersect in the context of the developing Russian tendency towards cultural, religious, and social homogeneity—a tendency accelerated, if not actually inspired, by the political establishment.

Few recent clashes over principle have been as contentious as those between members of traditional faiths and advocates for expanded LGBT rights. Drawing upon centuries of moral proscriptions against same-sex sexual behavior,\(^ {112}\) conservative individuals and institutions have raised a number of challenges to the increasing movement of LGBT persons and practices into the societal mainstream. These arguments range from the religious (same-sex conduct is inherently immoral, by virtue of the fact that it violates divine command\(^ {113}\)) to the pragmatic (the optimal arrangement for rearing children is a family headed by a married mother and father\(^ {114}\)). In response, LGBT allies have cited universalizing principles of human rights (the right to privacy in intimate affairs,\(^ {115}\) the right to enter into contractually-recognized relationships\(^ {116}\) and asserted that any significant social impact will be positive (the claim that LGBT individuals frequently make excellent parents, etc.\(^ {117}\)).

Similarly, a conflict narrative has emerged between established religious institutions and newer modes of expressing


\(^{113}\) E.g., Leviticus 18:22.


belief (or nonbelief, as the case may be).\textsuperscript{118} Much has been written about the purported fragmentation and/or decline of Western Christianity, stemming from an emerging lack of overarching worldview consensus.\textsuperscript{119} Accordingly, institutions are likely to be acutely aware of any hostility (real or perceived) directed toward their core tenets or composition. These forms of tension are frequently conceptualized as a conflict between socially conservative and socially progressive values.\textsuperscript{120} And indeed, those most likely to oppose LGBT political goals (the normalization of same-sex marriage and parenting, among other objectives) typically identify as “conservative”; conversely, those of a pro-LGBT disposition often consider themselves “liberals” or “progressives.”\textsuperscript{121}

To treat (as many on both sides have often done) the narratives of “human rights” and “public moral standards” as fundamentally oppositional is to overlook important commonalities. Both sides rely on similar rhetoric, emphasizing lofty themes of right and wrong that transcend cultural practices. This betrays a real area of shared intellectual ground: both conservatives’ and progressives’ operant framework for dialogue rests on several shared baseline presuppositions.\textsuperscript{122} These presuppositions are commonly termed “negative rights”: qualities

\textsuperscript{118} Adam Epstein, \textit{In America, Christianity Is Declining As “Non-Religion” Takes Hold}, QUARTZ, May 12, 2015, http://qz.com/403261/in-america-christianity-is-declining-as-non-religion-takes-hold/ ("As some Christian denominations become increasingly political (almost always toward the right), they have alienated some members of the religion.").


\textsuperscript{120} See, e.g., MAN YEE KAREN LEE, EQUALITY, DIGNITY, AND SAME-SEX MARRIAGE: A RIGHTS DISAGREEMENT IN DEMOCRATIC SOCIETIES 98–99 (2010).


\textsuperscript{122} See, e.g., Planned Parenthood v. Casey, 505 U.S. 833, 852 (1992) ("At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.").
which individuals possess *solely by virtue of their being human*, which other individuals, and society at large, are morally obligated to respect and affirm. The right to not have one’s property seized without cause, for instance, is a negative right: it depends on establishing what other entities *cannot* do. The affirmation of such baseline principles is common to both conservatives and progressives for the simple reason that both groups’ moral imperatives—to defend public morality, or to celebrate diversity in lifestyles—are contingent upon recognition of said principles. If individuals are invested with certain intrinsic qualities that trigger responsibilities, meeting those responsibilities is a moral duty. Questions over the precise character of negative rights (which obligations to one's fellow man should be recognized, and how should they be promoted?) are frequent and often controversial.

That being said, *epistemological* disagreement regarding the extent, identification, and character of human rights need not automatically translate into *ontological* disagreement regarding the very existence of such rights.

One of these negative rights affirmed by both groups may be termed *freedom of expression*. Both religious practitioners and members of the LGBT community are defined by a characteristic or set of characteristics with which they identify at a fundamental level. Crucially, expressing one’s identification or affiliation (an issue which implicates negative-right concerns) need not automatically translate into a demand for the state’s imprimatur of approval (an issue of positive rights). That said, the freedom to publicly identify with and celebrate a particular set of religious

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123 *See generally Understanding the Difference Between Positive and Negative Rights*, ALA. POL’Y INST., last visited April 16, 2015, http://www.alabamapolicy.org/wp-content/uploads/GTI-Brief-Positive-Negative-Rights-1.pdf (“A ‘negative right’ restrains other persons or governments by limiting their actions toward or against the right holder. In other words, it enables the right holder to be left alone in certain areas.”).

124 *See generally ALASDAIR MACINTYRE, AFTER VIRTUE* (1981) (arguing against the use of “rights” language as a means of expressing moral obligations between persons).

125 *See John Ehrett, After “After Virtue”: MacIntyre’s Critique of Human Rights*, THE SENTINEL 4 (Jan. 19, 2015), http://issuu.com/phcsentinel/docs/the_sentinel_1-1_pdf_. (“[R]ights language is . . . properly viewed as a proxy for concepts whose ultimate meaning in se may be non-articulable . . . . a Wittgensteinian shorthand of sorts, one that possesses utility alongside undeniably imperfect determinacy.”).
practices or way of conducting one’s private life is integral to civic pluralism, insofar as such expression is not in se intrinsically harmful (e.g. creation of child pornography). 126 In many Western democracies, abuses of this expressive freedom may be addressed via alternative legal channels—anti-vandalism statutes, for instance. Essentially, certain “bad fruits” which emerge in a free society may be pruned without uprooting or poisoning the entire tree; in American law, this practice is described as “narrow tailoring.” 127

Some observers in Russia and elsewhere have supported the recent measures taken by the Putin regime. 128 Their objectives are frequently laudable—among them, promoting respect for traditional values and protecting the welfare of minority religious groups. 129 Laws 136-FZ and 135-FZ, however, constitute far-reaching limitations on expressive liberty that, in the end, may serve to both undermine these observers’ goals and compromise a broader vision of a democratic marketplace of ideas. It is to this paradox that the discussion now turns.

In response to concerns regarding changing norms of public morality in their home countries, and further fueled by imprecise media reporting on Law 135-FZ, some cultural commentators in the West have voiced support for the Putin regime’s new policies. 130 While understandable on some level, such support risks merely propping up the sophisticated sociological narrative the regime appears to be cultivating. 131 U.S. conservative commentator

129 Id.
130 Id. But see George Weigel, Ukraine: Disinformation and Confusion, FIRST THINGS (Feb. 18, 2015) [hereinafter Weigel, Ukraine], http://www.firstthings.com/web-exclusives/2015/02/ukraine-disinformation-and-confusion (“The notion that Putin’s Russia can be a genuine partner in international pro-life and pro-family work is a snare and a delusion, given the murderous character of Putin’s regime. There can be no serious ecumenical dialogue with clerical agents of Russian state power.”).
131 See Weigel, Ukraine, supra note 130.
Pat Buchanan argues, “Putin is trying to re-establish the Orthodox Church as the moral compass of the nation it had been for 1,000 years before Russia fell captive to the atheistic and pagan ideology of Marxism.”\textsuperscript{132} This conclusion suggests that the Russian government’s goal with Laws 136-FZ and 135-FZ is, predominantly, a restoration of cultural morality. This may indeed be the case, but it is far less clear whether the “morality” in question is actually in line with the domestic social policies Buchanan personally favors—and on account of which he defends the actions of Putin’s government.\textsuperscript{133} Indeed, the actual practice of the Russian church-state establishment sharply diverges from the goals sought by American-style social conservatism.\textsuperscript{134}

Put simply, the justifications invoked in defense of restricting LGBT “propagandizing” may swiftly rebound against evangelical Protestant Christians or others with disfavored views (and Law 136-FZ opens the door for such an unintended effect).\textsuperscript{135} Likewise, LGBT groups critical of the established church may soon find themselves running afoul of anti-blasphemy legislation. Domestic and international observers alike must recognize that morally-inspired support for the legislation in question risks overlooking the fact that these issues are, counterintuitively, interwoven at a deep level. If history is to serve as any guide, the Putin regime may well not effect a restoration of cultural morality (as American observers understand it), but rather only a further consolidation of political power. Scholar Andrew Rosenthal observes, in commenting on American support for Law 135-FZ, that “[t]he Soviets tolerated a Russian Orthodox Church, as long as it toed the Kremlin line, but they persecuted pretty much every other religion, including evangelical Christianity. The Kremlin

\textsuperscript{132} Buchanan, supra note 128.

\textsuperscript{133} See Peter Pomerantsev, What Does the Russian Elite Really Believe In? ASPEN INST. (Feb. 2014) (“The Kremlin regime’s salient feature is a liquid, shape-shifting approach to power . . . .”) [hereinafter Pomerantsev, Russian Elite].

\textsuperscript{134} Cf. Id. (“The same Russian elites who now profess themselves religious conservatives were committed democrats just a few years ago, and avowed young Communists in their youth. They might now shout about Holy Russia fighting the fallen west but . . . have their children and funds in the same west they so decry.”).

allows religious observance, but regulates it, and Christianity is simply irrelevant to Kremlin policy.\footnote{136} Moreover, this state “regulation” is more than more bureaucratic rigmarole. The Slavic Centre for Law and Justice, a conservative policy analysis group, has extensively investigated such religious regulation—regulation that may, in some instances, cross the line into hostility toward non-sanctioned groups:

The specific character of the violations of the freedom of religion lie not only in individual cases of outrage, such as murders of priests in relation to their religious activity, but also in the ubiquity of these types of violations which are perpetrated regularly all over Russia. . . . The licensing of educational activities is only required with respect to professional training, whereas the teaching of religion does not fall into this category. Such restrictions are not necessary in a democratic society. Nevertheless, there are cases when law enforcement agencies try to dissolve non-Russian Orthodox religious organizations for the fact that they are engaged in teaching religion.\footnote{137}

The Putin regime’s social narrative is not without a level of sophistication—and, to some Western observers, a modicum of surface appeal.\footnote{138} The vision of a restored sense of public morality is often invoked by pro-Kremlin voices—a vision in which the human rights violations endemic to the Soviet Union are conspicuously absent. Stanislav Mishin, writing in leading Russian news outlet Pravda, argues that in the Soviet period, “[f]amily was of great importance, so perversions, like homosexuality was [sic] not tolerated and treated as a mental illness to be treated by psychologists not entertained by society or put upon a pedestal.”\footnote{139} This retro-utopian portrayal of traditional Russian cultural morality

\footnote{136 Id.}

\footnote{137 Slavic Centre for Law and Justice, Top Ten Violations of the Freedom of Religion in Russia, SLAVIC CENTRE FOR LAW AND JUSTICE (Apr.17, 2015), http://sclj.org/resources/09_1216-ViolationsofFreedomofReligion.htm.}

\footnote{138 Buchanan, supra note 128.}

may seem to suggest a level of surface ideological commonality with Western conservatives.

It is unlikely, however, that actual consensus exists between the views Mishin advances and those espoused by Western conservatives. Since the U.S. lacks the tradition of a state religious establishment, accordingly American observers naturally risk viewing the Russian Orthodox Church as discrete from the Kremlin. The norms of “civil society” taken for granted by the West, in which groups of various persuasions vie to see their views manifested politically, cannot be presumed to be present in Russian culture. If it were so, the Church might conceivably serve as a partner in advancing global social conservatism, for purposes beyond mere suppression of dissent: this assumption, however, may not be grounded in fact. Boston Globe correspondent Cathy Young highlights critical ways the Orthodox Church’s actual practices diverge from the aims of American conservatives:

Orthodox Christianity has taken Communism’s place as the new official ideology, with church membership an official badge of patriotism and loyalty. Russia’s political and religious leaders speak glowingly of church-state cooperation; in practice, the Russian Orthodox Church serves as a handmaiden of the regime, which grants it special privileges. Its head, Patriarch Kirill, has obsequiously praised the “miracle” of Putin’s rule and disparaged political protests. (The patriarch almost certainly has past ties to the Soviet-era KGB). Neither Kirill nor other senior clerics have criticized the government in areas where the church disagrees with official policy, such as abortion, which remains not only legal but free at public clinics; their statements on the subject have been low-key and deferential. \(^{141}\)

\(^{140}\) Cf. Pomerantsev, Russian Elite, supra note 133 (noting the emergence of “faux civil society organizations to drive the national debate the way the Kremlin wants.”).

\(^{141}\) Cathy Young, Vladimir Putin is No Ally for the Right, BOSTON GLOBE (Aug. 21, 2013), http://www.bostonglobe.com/opinion/2013/08/21/putin-friend-gays-finally-for-right/i02pH9skFergvPtAW0GOVK/story.html (emphasis added).
The concept of a Russian Orthodox Church committed to the defense of traditional conservative views—whose countercultural stance might render it an ideological ally on par with the Catholic Church—may be a sophisticated political smokescreen. In the view of Buchanan and others, it is the responsibility of religious establishments to stand for timeless moral principles, even if such a stance may not be politically expedient. The leadership of the Orthodox Church, however, faces institutional barriers that restrict the possibility of its taking such countercultural positions. Accordingly, those in the West who favor Russian social norms cannot be confident that either the Church or state actually shares their moral sympathies; powerful incentives exist for the Church not to compromise its privileged relationship with the Kremlin.

The question has heretofore been left open as to whether or not the “social conservatism” used to target minority groups actually does stem from orthodox (small-“o”) Christian doctrinal convictions, as some Russian commentators have suggested. A correlation between church and state domains of authority, which has been previously established, must not be automatically construed to undermine the veracity of any claims to cultural consensus. If the claims suggested by Evans and Alexeev (that aspects of the Orthodox Church’s doctrine have been hijacked for nationalistic purposes) are to be legitimated, a cultural movement away from the tenets of Christianity, conventionally understood, should conceivably have occurred on some level. Indications of such a tendency in Russian society towards a divergent understanding of traditional moral norms do indeed exist. It has been previously noted that the Orthodox Church has displayed a

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142 See Pomerantsev, Russian Elite, supra note 133.
143 See, e.g., Victoria Hudson, The Russian Orthodox Church under Patriarch Kirill, Open Democracy (Mar. 31, 2015), https://www.opendemocracy.net/od-russia/victoria-hudson/russian-orthodox-church-under-patriarch-kirill ([T]he Russian Ministry for Economic Development and Trade has submitted a draft bill on the restitution of property confiscated by the Bolsheviks; and now held by the state. The bill would turn the ROC into one of the largest . . . landowners in the country . . . .)
144 See Weigel, Ukraine, supra note 130.
145 See Hudson, supra note 143.
146 Mishin, supra note 139.
147 See Young, supra note 141; see also Pomerantsev, Russian Elite, supra note 133.
reticence to challenge the political establishment; if anything, this may be a significant understatement.

Just as Stalin’s co-optation of the Church resulted in an increasing emphasis on extant liberation-theology tendencies within Orthodox Christianity, Russia, under Putin, has undergone a sociocultural evolution in which traditional Christian principles have, at least in some spheres of Russian culture, been understood in political rather than spiritual terms. If the potential for conflict exists between historic religious doctrine and contemporary political expediency, Russian society is apparently willing to compromise on the former. Journalist Peter Pomerantsev explains how the popular façade of collective Orthodox unity is not definitionally synonymous with “shared religious convictions”:

Today, 90 percent of ethnic Russians now identify themselves as Orthodox, according to statistics from the Levada Center, an independent research organization, and the sociology institute VCIOM [sic]. There are some caveats: fewer than 10 percent of Orthodox respondents say they attend church regularly, and 30 percent of them admit they don’t believe in God. (The phrase “Orthodox atheist” has become common.) . . . For its part, the state has gone from persecuting the church to co-opting its ancient tropes.

The supposed cultural consensus invoked to justify restrictions on expressive freedom—of both religious and sexual-identity minority groups—may actually be attributable to the political integration of church and state, rather than to a Russian moral renaissance: it follows that the Church, echoing historical tendencies towards the conflation of church/state authority, risks


149 Cf. Weigel, Kowtowing to Moscow, supra note 109 (“Moscow, which has long imagined itself the ‘Third Rome,’ seems less interested in unity within the family of Orthodoxy, and between East and West, than with asserting itself over-against the ‘Second Rome,’ Constantinople, and with supporting Russian foreign policy.”).

undermining its role as a timeless moral fixture in favor of increasing politicization.\textsuperscript{151} In light of such radical reinventions of traditional Christian thought, and the simple fact that many “Orthodox” affiliate with the Church for purely cultural reasons,\textsuperscript{152} it is reasonable to speculate whether Laws 136-FZ and 135-FZ, irrespective of whether or not they reflect the deeply held religious beliefs of the citizenry, may actually be a product of traditional socio-cultural norms brought within the Kremlin’s fold and subsequently invoked for moral credibility.

The idea of “Holy Russia” as a construct that must be defended is not new.\textsuperscript{153} The ways in which social policy (Laws 136-FZ and 135-FZ) has been employed to bolster such a construct, however, lend support to the idea that church-state integration may have engendered a cultural way of thinking in which pluralism is seen as fundamentally subversive: in the Putin-era civil religion of Russia, minority viewpoints may be seen as threatening.\textsuperscript{154} Furthermore, external factors—circumstances bearing a resemblance to those that incentivized Stalin to pursue a church-state \textit{rapprochement}—exist which may have catalyzed this recent trend, as the next section will consider.

Due to the persistence of centripetal cultural forces opposed to pluralism, both historic tendencies and current religious trends result in a politically advantageous scenario for the Kremlin administrative establishment. For those holding to traditional Orthodox beliefs, the Putin-era Orthodox Church has been puzzlingly quiet on social questions such as abortion;\textsuperscript{155} moreover, the Church has remained largely silent while nationalists within Russia have invoked traditional doctrines—including those historically invoked to justify charity, such as “turning the other

\textsuperscript{151} Cf. Evans, supra note 103, at 35.

\textsuperscript{152} Pomerantsev, \textit{Putin’s God Squad}, supra note 150.

\textsuperscript{153} See Weigel, \textit{Kowtowing to Moscow}, supra note 109 (“[T]he leaders of Russian Orthodoxy aspire to hegemony within Orthodoxy, [and] claim to be the sole legitimate heirs of the baptism of Rus’ in 988 . . .”).

\textsuperscript{154} See, e.g., Dennis Prager, \textit{Is There a Russian Conscience?} NAT’L REV. (July 22, 2014), http://www.nationalreview.com/article/383344/there-russian-conscience-dennis-prager (“Vladimir Putin suppresses, sometimes violently, virtually all dissent in Russia, and most Russians seem to be entirely comfortable with it. Not just comfortable—supportive.”).

\textsuperscript{155} See Young, supra note 141.
“cheek”—as talismanic mandates lending moral force to the marginalization of minority groups. For the nonbeliever witnessing such trends, the Putin-era Orthodox Church may appear to be a patriotic relic of a bygone age, a longtime handmaiden to the nationalistic cultural engine that powered the Soviet Union through its heyday (including contra Nazi Germany).

As of 2015, the Orthodox Church under Putin has continued to manifest these increased tendencies towards political integration—more specifically, integration in the service of a national ideal which is promulgated in contraposition to the regime’s opponents. Moscow correspondent Gabriela Baczynska explores the role played by the Church in the ongoing Ukrainian political crisis:

Russia has used the alleged threat to the worshippers of the Moscow-backed church in arguing it had the right to send in troops to Ukraine to protect its nationals and Russian speakers. Moscow and [Orthodox Patriarch] Kirill have both repeatedly described Ukraine as Russia's “brotherly” nation, such rhetoric standing in sharp contrast to the pro-Western aspirations voiced by many protesters in Kiev. "We are now all deeply worried with what is happening in Ukraine. It's the same as if it was happening in our country or in the family of each one of us," Kirill said on February 26.

By making such statements as a representative of the officially sanctioned Church, the Patriarch effectively accedes to

156 Pomerantsev, Putin’s God Squad, supra note 150 (“When Alexander Bosykh, a religious-nationalist aide to the deputy [Prime Minister], was photographed punching a female Pussy Riot protester, he responded: ‘You only turn the other cheek to people you know. I don’t know her so I hit her.’”).

157 Jordan Hupka, The Russian Orthodox Church as a Soviet Political Tool, 2 CONSTELLATIONS 31, 39 (2011).

158 See Weigel, Ukraine, supra note 130 (“[T]he Russian Orthodox Church leadership has been, sadly, a participant in Moscow’s disinformation campaigns.”).

the unfolding Russian rhetorical narrative regarding Ukraine—a narrative in which recent military incursions are simply a restoration of historically Russian territory (a reunification of the “Russian family”). This homogeneity of viewpoint between Church and Kremlin suggests, yet again, the tendency of the Church to conform to administrative norms: as Russian political scholar Dmitry Oreshkin observes, “On Ukraine, as elsewhere, the Russian Orthodox Church these days unfortunately cannot have any stance different from the state's one because it is becoming more and more an instrument of state policy.”

As during World War II, the Russian government is engaged in patterns of political behavior that place it at ideological odds with other powerful members of the international community. Promoting unity of domestic culture is important in attaining the Kremlin’s political ends, particularly given the state’s lack of a trajectory toward pluralism. Accordingly, cultivating ever-closer ties with the official Orthodox Church—and legislatively marginalizing minority groups whose activity might undermine a cultural ideal—is, for the Kremlin, an integral aspect of this process. Laws 136-FZ and 135-FZ may well be the resulting manifestations. Historian Mara Kozelsky, a scholar of the Russian empire and of the Crimean region more particularly, concurs:

The prosecution of Pussy Riot for performing in an Orthodox church as well as dismayed anti-homosexual legislation reflects a new stage in the evolution of Russia’s deeply conservative Orthodox identity. . . . Religion is one of the intangible

160 See Id.

161 Id.

162 Stephen Sestanovich, Russian Democracy in Eclipse: Force, Money, and Pluralism, 15 JOURNAL OF DEMOCRACY 32, 32 (2004) (“Most analysts seem to agree that the disorderly pluralism of the Yeltsin era is at an end, and that the victorious siloviki—officials who began their careers in the old Soviet coercive apparatus—are restoring the dominance of Russian state institutions.”).

163 See also Marlene Laruelle, Conservatism as the Kremlin’s New Toolkit: An Ideology at the Lowest Cost, 138 RUSS. ANALYTICAL DIGEST 2 (2013), http://www.css.ethz.ch/publications/pdfs/RAD-138-2-4.pdf (“Putin’s third term in office confirms two trends. Firstly, over the years the Kremlin has gradually developed an ideological meta-narrative while still refusing to elaborate details about it and to systematize its contents. Secondly, this meta-narrative crystallizes values identified as conservative.”).
elements driving Russia expansion southward, and one of the reasons why Russian citizens, and particularly the Orthodox devout, may not protest their own government’s actions in this particular conflict.\footnote{\textsuperscript{164} Mara Kozelsky, \textit{Don’t underestimate importance of religion for understanding Russia’s actions in Crimea}, WASH. POST (Mar. 13, 2014), http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/03/13/dont-underestimate-importance-of-religion-for-understanding-russias-actions-in-crimea/} This “religion,” of which Kozelsky speaks, however, is more properly understood as a resurgence of civil religion \textit{par excellence}, rather than as a mass revival of doctrinally robust Orthodoxy.

In light of the ongoing movement away from the conventional understanding of civic pluralism, minority groups may indeed find a level of ideological common ground born of a baseline shared purpose: the desire to articulate and promote diverse viewpoints, absent pressure from a state seeking to marginalize non-majoritarian positions. The precise nature and manifestation of such a shared purpose—and the broader implications from a more holistic international standpoint—will be considered in subsequent Parts.

V. INTERNATIONAL DIMENSIONS OF RUSSIAN SPEECH RESTRICTIONS

It has heretofore been argued that today’s increasingly close ties between the Russian church and state have occurred by means of a pattern somewhat similar to that epitomized by Stalin’s \textit{rapprochement} during World War II, and that (as under Stalin, and the tsars before him), the Church’s role in society has evolved to fit the Kremlin’s purposes. Moreover, while the rhetoric of social conservatism and a shared religious heritage is today employed by the Putin regime to justify overbroad regulations, evidence suggests that the rationales behind Laws 136-FZ and 135-FZ are, on a core level, grounded in fundamentally political considerations.

Analysis must now turn to the question of broader-scale implications, particularly from an international perspective. Core issues here center on the international systems to which Russia is a party, and the “human rights” commitments made therein.
A. INTERNATIONAL INSTITUTIONS AND TREATY OBLIGATIONS

The United Nations formally advocates a pluralistic social ethic throughout its governing documents: the 1948 *Universal Declaration of Human Rights* (UDHR), in the course of laying out a broad tapestry of both negative and positive rights, proclaims in Article 19 that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” 165 Benedict Rogers, in indicting the larger concept of “blasphemy laws,” drives this point home:

A fundamental human right is the freedom of thought, conscience, religion or belief. Another is freedom of expression. Without either of these, what other freedom matters? Yet so-called blasphemy laws are complete violations of these two rights, established respectively in Articles 18 and 19 of the Universal Declaration of Human Rights. If we do not have the freedom to think, to choose what to believe, to change our beliefs, to question the beliefs of others, to share our beliefs with others without coercion, or to decide not to believe, we have no freedom.166

The Russian administration’s apparent lack of concern for its obligations under the UDHR is matched by its reticence to uphold the standards required by its membership in regional cooperative organizations, as the Institute on Religion and Public Policy points out:

Russia is a member of the Council of Europe and is bound by certain obligations in regards to maintaining international standards of human rights in its jurisdiction. . . . Article 10 of the ECHR [European Convention on Human Rights] establishes the right to freedom of expression, which includes the freedom to “receive and impart


information and ideas without interference by public authority.”

Among the “information and ideas” presumably encapsulated by the ECHR’s declaration are critiques of state-sanctioned religious establishments and political statements made in support of LGBT rights and individuals—both of which would be restricted under Laws 136-FZ and 135-FZ. Significantly, Russia’s ongoing violations of such obligations have not gone unnoticed by the relevant supranational actors, as Paul Johnson, writing in the Jurist legal journal, notes:

What is astonishing about the recent ratcheting up of these regional anti-gay provisions in Russia is that they are in direct defiance of the European Court of Human Rights (ECHR), which has explicitly admonished Russian public authorities for prohibiting public association and assembly on the grounds of sexual orientation.

Potential Russian rebuttals to external criticism may conceivably invoke article 13, clause 5 of the Russian constitution, which stipulates that “[t]he 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.”

Facially, this appears to foreclose criticism based on liberal or pluralistic conceptions of expressive freedom; the expansive protections guaranteed by the American First Amendment, for instance, do not seem to exist here.

Yet such an analysis is incomplete: the Russian constitution itself imposes obligations to conform to the standards of international norms, and when these norms are deemed to be in

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169 KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 13 (Russ.).
conflict with existing Russian laws, the international standards are to be treated as controlling. In the document’s own words, “[t]he 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 fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.” This expansive incorporation of international standards into Russian law renders the state subject to criticism on the basis of obligations it has failed to uphold. Among these obligations, as previously noted, are those conferred through Russian membership in various global and regional organizations, which codify the right to free expression. Some Russian and international jurists appear to agree with this more robust conception of pluralistic society, as journalist Joe Morgan observes:

Arrested, charged and fined 1,500 rubles ($46, €34), [Irina] Fet was found guilty of informing minors about homosexuality. While her group Moscow Pride appealed the charge, they lost at a local court. After that, the case was sent to the UN Human Rights Committee to challenge the arrest. On 31 October 2012, the UN committee ruled in their favor, describing the law as ‘discriminatory’ and ‘arbitrary’. They agreed the law went against the International Covenant on Civil and Political Rights, by violating Fet’s right to freedom of expression and protection from discrimination. Ryazan regional court today (2 October) has now agreed with the international ruling, and cancelled all prior charges and verdicts.

The particular rationale behind the UN committee’s decision warrants a brief discussion. Notably, the committee recognized that while Russian authorities do have a legitimate interest in protecting children from inappropriate information, the particular conduct in question did not fall outside the norms of

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170 Id. at art. 15.
propriety for which the government had argued; thus, prosecuting 
Fet on the basis of a vaguely-defined statute would be an 
impermissible violation of her expressive liberties under the 
Covenant:

While the Committee recognizes the role of the 
State party’s authorities in protecting the welfare of 
minors, it observes that the State party failed to 
demonstrate why on the facts of the present 
communication it was necessary, for one of the 
legitimate purposes of article 19, paragraph 3, of the 
[International Covenant on Civil and Political 
Rights] to restrict the author’s right to freedom of 
expression on the basis of section 3.10 of the 
Ryazan Region Law, for expressing her sexual 
identity and seeking understanding for it, even if 
indeed, as argued by the State party, she intended to 
engage children in the discussion of issues related to 
homosexuality. . . . Furthermore, the Committee is 
of the view that, by displaying posters that declared 
“Homosexuality is normal” and “I am proud of my 
homosexuality” near a secondary school building, 
the author has not made any public actions aimed at 
involving minors in any particular sexual activity or 
at advocating for any particular sexual orientation. 
Instead, she was giving expression to her sexual 
identity and seeking understanding for it.\(^{173}\)

The crux of the opinion’s logic rests on the premise that Fet’s 
conduct was not aimed at drawing children into a particular 
lifestyle or communicating objectionable information (she did not 
encourage her observers to engage in homosexual behavior or 
identify as homosexual themselves, nor did her expressive activity 
provide inappropriate details of sexual practices). Rather, her sign 
was an opinion statement grounded in her perception of personal 
identity: that she believed that identifying as homosexual was 
normal, and that she saw an element of her personal identity as 
something of which she was proud. Alternative perspectives 
offering a narrative different from Fet’s could have been provided 
in a variety of contexts—by teachers or by students’ parents, for 
instance—without the need to treat her conduct as expressly

\(^{173}\) U.N. Human Rights Comm’n, Int’l Covenant on Civil and 
criminal. Observers in Western democracies, culturally accustomed to a plethora of diverse voices in the public square, would likely not have found her behavior troublesome; Russian society, however, lacks this expressive tradition. A legitimate basis for restrictions on certain types of expressive conduct—obscene public displays endeavoring to communicate a message similar to Fet’s, for example—that might well exist, and this possibility is not foreclosed by the UN committee’s ruling. Prosecution of statements of expression unaccompanied by otherwise objectionable activity, however, is considered a violation of the Covenant.175

International organizations, voluntarily joined, lack broad enforcement or police powers;176 the utility of transnational legal norms exists only insofar as such norms are incorporated by national and subnational court systems. The Ryazan regional court, in accordance with the requirements of the Russian constitution, did indeed effect such incorporation.177 Yet while this decision does constitute a move towards greater expressive liberty in the public square, two major concerns persist: first, the Ryazan ruling only addressed a regional law, leaving the federal regulation in place;178 and second, the Ryazan decision should not be seen as jurisprudentially influential, in any meaningful sense, upon subsequent challenges to the broader restriction. As Morgan explains, “Russian courts do not rule using precedents.”179

In perhaps the most damming indictment of all, the Kremlin itself rejected Law 135-FZ as legally impermissible on four separate occasions, before finally capitulating in order to capitalize on the groundswell of popular support.

174 See Miller v. California, 413 U.S. 15 (1973) for ways in which a pluralistic social tradition has sought to address the question of obscenity.
177 Morgan, supra note 172.
178 Id.
179 Id.
In its public messaging against the law, the U.S. government should highlight the previous positions of the Russian government, which articulately opposed earlier versions of the anti-“propaganda” law four times. The Prime Minister’s office exposed the law’s illogic and illegality, explaining how the “propaganda” bans violated the Russian constitution, the country’s criminal code, and Russia’s international obligations. By using the Russian government’s own words, the U.S. would make a strong case against it and expose the cynicism of its about-face on this issue.\(^\text{180}\)

Time alone will tell whether the Kremlin establishment eventually will display due deference to the international structures it is legally mandated to affirm; however, in light of the matters at stake, the sociopolitical credibility of both Putin’s regime and the Orthodox Church, at present, this would appear to be an unlikely outcome.\(^\text{181}\)

In light of such a fluctuating portrait of expressive liberty within Russia, additional avenues of suitable responses, as available to those entities with the capacity to take meaningful action against these worrisome trends in Russian political culture, will be explored in the following and final Part.

VI. TOWARD COMMON PURPOSE

The broad theoretical argument supporting the “negative right” of expressive freedom—an argument that underpins the stances of both religious liberty advocates and LGBT supporters—has been discussed at length above. It is conceivable that social progressives and conservatives alike can recognize that the issue of expressive freedom in Russia may be addressed, and that advocacy may be pursued toward such an ideal, without rendering judgment on the specific merits of the viewpoints in question. The intersection of political interests between advocates of religious


freedom and those within the LGBT community is currently in a state of legal flux; in many Western liberal democracies, these spheres of interests are at odds, and long-term outcomes remain uncertain.\textsuperscript{182} As it were, the very existence of such an open controversy in liberal democracies is an indicator that expressive freedom is, as yet, still alive and well. In Russia, however, the debate between groups with potentially opposing objectives has not yet reached this conflict stage.\textsuperscript{183}

The immediate question is not which group’s goals, if any, will emerge triumphant; the question is whether or not either will be free to \textit{make an argument}. Education and persuasion are necessary elements of such an argument, yet religious and sexual minority groups’ ability to engage in such activities is restricted in Russia under Laws 136-FZ and 135-FZ.\textsuperscript{184} Broad support for such expressive freedom need not immediately translate into marginalization of one side or the other. With this understanding in mind, it remains to be considered the specific, actionable steps that may be taken by liberal-democratic policymakers, in the United States and elsewhere, to further the ideal of expressive freedom in the Russian Federation.

Leading Western policymakers are well situated, by virtue of their international prominence, to speak out against international violations of human rights. Such a stance falls in line with the recommendations of the International Religious Freedom Roundtable, which has condemned the expansiveness of Law 136-FZ’s “anti-blasphemy” restrictions:

President Obama and Secretary of State Kerry should publicly and specifically condemn the recent wave of repressive laws and their enforcement. These public statements should focus public attention on government actions that violate the Russian constitution and Russia’s international commitments.\textsuperscript{185}

\textsuperscript{182} See, \textit{e.g.}, Obergefell v. Hodges, No. 14-556 (S. Ct. argued Apr. 28, 2015).

\textsuperscript{183} The debate in Russia hinges not on state sanction of LGBT relationships, but rather state suppression of LGBT activism.

\textsuperscript{184} See \textit{supra} Part II.

\textsuperscript{185} Letter from Russia, Int’l Religious Freedom Roundtable, to U.S. Gov’t (Sept. 4, 2013) (on file with author),
As an aside, it is perhaps ironic that certain religious publications protesting “moral and ethical shortcomings in society”\textsuperscript{186} may run afoul of Russian governmental sensibilities, given the government’s stated rationale for limiting LGBT expressive freedom, restoring public morality. This apparent inconsistency serves, however, to bolster prior evidence suggesting that such legislation likely emerges from the need to establish a unified Russian culture as a winsome alternative to the West, rather than from a theologically coherent commitment to civic morality.\textsuperscript{187}

Non-governmental actors may also play a role in pushing back against these trends. The restrictive understandings of liberty advanced by Putin and others gain moral credibility via their contraposition against a purportedly decadent West.\textsuperscript{188} Implicit in this idea of decadence is a complaint against popular apathy on the parts of individual citizens: pro-Kremlin academic Andranik Migranyan has spoken out against critics of Russian governmental authoritarianism, claiming that Putin’s Russia is no worse than Western governments in the area of civil liberties:

[I]n Russia, the liberal-human-rights sphere has remained mum about the rights to privacy of Americans and other citizens. Why? What has rendered these self-appointed defenders of liberty, so quick to lash out at Putin, mute when it comes to America?\textsuperscript{189}

Migranyan’s point may or may not be valid; its introduction, however, obviates the immediate concerns at hand. Concerns over civil liberties in liberal democracies, while an important topic of inquiry and debate, have no bearing on the particular matters of concern that have developed in the Russian Federation. Furthermore, the civil liberties issues in question are distinct from

\textsuperscript{186} \textit{Id.}

\textsuperscript{187} \textit{See supra} Part IV.

\textsuperscript{188} \textit{See} Peter Pomerantsev, \textit{What Does the Russian Elite Really Believe In?} ASPEN INST. (Feb. 2014) (“[R]eligious conservative rhetoric has become a staple in Russian propaganda, with attacks on decadent gay-Europa contrasted with invocations of Holy Russia . . . ”).

the constraints on expressive freedom that have attracted special scrutiny. But although Migranyan’s specific argument serves to veil, rather than address, the real issue in question, his contention does highlight important ideas: individual citizens’ commitment to democratic principles should not be restricted to matters that dominate the international press scene, and domestic political involvement is likely critical in impacting Russian political trends.

Migranyan’s indictment bears consideration, however, with respect to another realm of Western culture. Given the increasing gravitation towards LGBT civil equality in Western states, maintaining the expressive liberties of those holding more traditional or religiously motivated views is an important consideration—and one often overlooked in instances of media outrage over anti-LGBT statements. This is of particular significance in light of the disproportionate media coverage of Law 135-FZ (restricting LGBT expressive freedoms) relative to Law 136-FZ (implicating religious freedom).190 Kiska, Lipsic, and Coleman observe:

As many groups are calling for a boycott of the Winter Olympics, it should be noted that the host of the 2012 Summer Olympics, the United Kingdom, has also seen dozens of cases arise where freedom has been restricted due to religious and traditional beliefs on homosexual behaviour and same-sex relationships. For example, preachers have been arrested and convicted for speaking against homosexual behavior. . . .191

In order to maintain the moral coherence of their stance against Russian regulations on expressive freedom, Western LGBT political groups must be willing to affirm the importance of protecting pluralism of expression in the public square—a principle that holds even when groups or organizations seek to express socially disfavored viewpoints.192 Activists on the left and

191 Id.
192 See, e.g., Conor Friedersdorf, Should Mom-and-Pops That Forgo Gay Weddings Be Destroyed?, THE ATLANTIC (Apr. 3, 2015), http://www.theatlantic.com/politics/archive/2015/04/should-businesses-that-quietly-oppose-gay-marriage-be-destroyed/389489/ (arguing that a “religious impulse to shy away from even the most tangential interaction
the right may hold to radically disparate visions of “the good society,” but an effective defense of baseline liberties recognizes the necessity of open dialogue. Individual efforts towards argumentative consistency—and, as previously observed, greater responsibility on the media’s part where the nuances and implications of international policy are concerned—might go far toward offering an alternative to the cultural narrative that the Putin regime has countenanced.

A still more powerful cultural presence remains unmentioned. For the last several decades, the Orthodox Church has largely served as an organ of the dominant political power. But a broad Western characterization of the Church as an institutional collective, however apt, risks perpetuating the Church’s own veneer of ideological homogeneity. Such homogeneity may or may not actually exist—a potentially intriguing divergence, and one reflected in Pomerantsev’s inquiry into Russia’s thorny relationship between church and state:

“The tragedy of the church is that it has always grown too close to the state, and then it pays for it. Now the church is trying to prove to the Kremlin it is a serious and useful player,” says Archpriest Alexei Uminsky, a Moscow clergyman whose ministry includes members of the protest movement . . . . “We are at a crossroads: either the church starts to stand up for conscience or it will get blamed for all the Kremlin’s faults. But for that we need to abandon our old illusions: the ‘Third Rome,’ dreams of an Orthodox superpower,” Uminsky says.

True-believing members of the state Orthodox Church—an entity which has done little to question a regime hostile to the expressive freedom of minority groups—face a grim yet

with gay weddings can be met with extremely powerful and persuasive counterarguments . . . [when] operating in the realm of reason rather than coercion . . . [and] more interested in persuading than shaming or claiming scalps.”

193 See supra Parts III-IV.
194 See, e.g., the characterization offered by Blank, supra note 50.
unavoidable choice: allow the favorable status quo to persist, but witness the slow degradation of doctrine and historic identity; or to stand against the system that both nurtures and funds them, and in so doing finally enjoy independence and freedom of conviction.\textsuperscript{196}

In the end, a great deal of responsibility may lie with individual persons of faith—whether those abroad, or those within Russia—to stand for expressive freedom.\textsuperscript{197}

Insofar as the issues in question are matters of domestic policy, the ability of the international community to take direct action is restricted. Soft-power avenues of response, however, may be realistically envisioned: government leaders may offer constructive advocacy of liberal norms; citizens may model effective democracy by treating complex issues with both appropriate nuance and consistent moral standards; individual Orthodox priests and persons of sincere faith may speak out against state power centralization. Opportunities for strategic engagement on these subjects do exist: it is the prerogative and responsibility of those with the opportunity to seek them to do so.

\section*{VII. CONCLUSION}

As countless social critics and scholars have observed, religious freedom considerations and emerging conceptions of LGBT rights are, at present, frequently found in conflict within Western democracies.\textsuperscript{198} These are issues that deserve intense consideration and engagement, as well as further research and scholarship. Yet both groups oftentimes take for granted the principle of expressive freedom which is integral to their very existence: in liberal democracies, ideological systems stand on a level playing field, on which they must stand or fall according to their intrinsic merits. In contemporary Russia, this fundamental

\textsuperscript{196} \textit{Id.}

\textsuperscript{197} \textit{See George Weigel,} Ukraine: Disinformation and Confusion, \textit{FIRST THINGS} (Feb. 18, 2015) [hereinafter Weigel, Ukraine], http://www.firstthings.com/web-exclusives/2015/02/ukraine-disinformation-and-confusion (“It’s entirely possible to honor the noble and living tradition of Russian Orthodox spirituality \textit{and} recognize that Russian Orthodoxy’s leadership today functions as a Kremlin mouthpiece in matters Ukrainian, even as it lies . . . and betrays its ecumenical commitments in doing so.”).

\textsuperscript{198} \textit{See generally SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY: EMERGING CONFLICTS} (Douglas Laycock et al., eds, 2008) (discussing the possible implications for religious freedom of expanded same-sex marriage rights).
baseline cannot be presumed to exist: as John Dalhuisen, Europe and Central Asia Director at Amnesty International, has written, “[T]his is the reality of Russia today . . . the disregard the authorities there have for their international and national obligations in promoting the human rights of all people under their jurisdiction.” Among these obligations is the principle of allowing social perspectives to exist that may diverge from those most advantageous to the state.

This analysis has explored how spheres of moral discourse, particularly the Russian Orthodox Church, have been co-opted by a state political establishment seeking to limit the expressive freedom of minority groups and dissident communities—whether those groups take the form of Protestant Christian congregations or LGBT support organizations. This emergent process of co-optation, potentially effected for purposes of internal power consolidation, may have developed from considerations similar to those which incentivized Stalin’s similar move during World War II—namely, the necessity of contraposition against a West viewed as antithetical to Russian interests. Such moves capitalize on the Orthodox Church’s historic capacity for theological reinvention. Subsequent limitations on liberty, in light of Russia’s external treaty commitments and the expectations codified in the Russian constitution—exemplify a disregard for the international norms to which the state has officially committed itself; opportunities for action do exist, but the responsibility for systemic reform will ultimately rest with the Russian people.

Achieving a robust conception of civic pluralism and balancing the interests of rival groups—particularly where issues of religion and public morality are concerned—is a dilemma that confronts any liberal society. Controversies over the operation of traditional moral codes as justifications for state action are not new, and are likely to continue for decades to come. Seeking to re-characterize or subsume traditional moral doctrines in the service of political ends, however, both undermines conceptions of “transcendent” truth and results in widespread marginalization of

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200 See supra Part IV.

201 See supra Part III.

202 See supra Part V.
those deemed outsiders. A broad understanding of transcultural human rights—including the right to expressive freedom, even of views deemed unorthodox—must inform any social construct that seeks to truly flourish.