

УДК 316

SEX WITH A HOLLOW BODY: LACUNAS IN DISCOURSE ABOUT HOMOSEXUALITY IN RUSSIA

Alexander Kondakov

MA for the Sociology of Law, researcher,

Centre for Independent Social Research (St. Petersburg, Russia).

In the new Russia, some people experience exclusion from citizenship. This exclusion is based on different claims of identity: lesbians and gay men are among those who are excluded. Though in some states the mechanism of this exclusion is expressive so long as it is inscribed in the law manifestly, in Russia the mechanism is hidden in the field of silence: the articulated field of discourse on homosexuality is full of lacunas. While the most productive speakers are certainly LGBT activists, the most passive ones are the officials. These forces come into discursive play where rights are at stake. The purpose of this paper is to uncover the regulative features which silence entails in the Russian discourse on homosexuality.

Key-words: Homosexuality; Russia; discursive silence; human rights.

1. Introduction

It is almost twenty years since Russia started to move towards liberalisation of the individual life of its citizens. Subjected to the Soviet state's ideological regime, the citizens of the USSR were incapable of acting independently in public due to actual and presumable sanctions for various sorts of 'violations' of the Soviet order. From the beginning of the 1990s Russia claimed to be building a free and democratic society in which a human is granted 'independence' through respect for her rights. But the understanding of who may count upon human rights has turned out to be debatable. Some people have clearly been excluded from the category of possible rights possessors.

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

The purpose of this paper is to uncover the regulative features of the Russian discourse on homosexuality. In this regard it is necessary to take into account both sides of the story: the one that is articulated together with one that is unsaid. I argue that what is not said and what is silenced matter. By a variety of means the unsaid shapes the articulated discourse on sexuality in Russia. Taking into account the fact that silence is the main 'rhetoric' of the authorities it is possible to suggest that it is used to discipline the subjects of the discourse under discussion. Silence seems to be brought into action when articulated prohibitions can no longer be enforced. In the next section I outline the history of the discourse on homosexuality in Russian law in order to find the point at which silence became a preferable means of authoritative speech.

In section 3, I provide further information on the specific subject of my analysis. The article arises from an empirical study of the discourse propounded by Russian LGBT organisations. The details of the study are provided in that section. In section 4, I consider the potential correlation of LGBT organisational discourse with the discourse of the powerful. Despite the fact that it is basically constituted from silence, I have tried to see exactly how the discursive lacunas unconsciously directed by authoritative power govern the homosexual body. Hence, section 4 is dedicated to the deconstruction of silences in authoritative discourse, that is, Russian law and policies on homosexual issues.

The production of lacunas in the discourse may not be a result of the officials' intentions, though the result of their workings quite obviously follows the official line of treatment of homosexuality in Russia. The silence of the powerful constitutes what others may say. This connection between lacunas and the speakable is the main concern of this article. The analysis in section 5 will show how discursive forces work to make up LGBT organisational discourse and its subjectivities, using the example of strategies employed by the Russian LGBT organisations to argue for same-sex marriage.

2. From Sodomy to Buggery

The history of the legal condemnation of homosexuality in Russia is inseparably linked to the authoritative power of its rulers. The foreigners who visited Russia in medieval times were shocked by the attitude of the Russians towards what they called 'sodomy': it seemed that the 'sin' was regarded as something natural and essential by the locals (Kon, 2005: 321-322). At the same time, Europe was cruelly persecuting homosexuality, burning its practitioners at the stake and drowning them in European rivers.

However, Russian tyrants were on hand to 'rescue' the situation: it was Ivan the Terrible who for the first time claimed to condemn 'sodomy' in the law (see, 'Council of a Hundred Chapters', Tsar's Word 29 and Chapter 33). This prohibition concerned the clergy. Then Peter the Great introduced penalties for homosexual practices in the army (see, Art. 166 of his 'Statutes'). But it was during the reign of Nicholas I that the Criminal Code of Russia, devised on the German model, was enacted in 1832. The emperor was known as the 'policeman of Europe' for his irrepressible desire to suppress uprisings all over the continent. He was also the initiator of censorship law in Russia and of the intelligence service.

This date marks the criminalisation of male homosexual desire in Russian legal discourse. There is no evidence that paragraph 995 of the Criminal Code 1832 which punished homosexual intercourse was extensively enforced. But it undoubtedly provoked discussion (Nabokov, 1902) and contributed to certain changes in the legal discourse on homosexuality. Perhaps criminalisation was the first step towards and the very mechanism of doing silences in law and politics, pronouncing homosexuality at the same time.

The Soviet revolution of 1917 ushered in a period of liberalisation of the body in discourse. Up to a certain point, Russia made significant progress in achieving individual freedom from any oppression. Male homosexuality was decriminalised and, moreover, homosexual discourse flourished in poetry (especially lesbian poetry) and literature. But recriminalisation of homosexuality seems to have been an evident task of the new tyrant of Russia. In 1934, Stalin included clause 154a in the RSFSR Criminal Code which provided imprisonment for a period up to 5 years as the punishment for voluntary 'sexual relations of a man with a man (buggery)'.¹ The intentions of its enactment are clearly stated in police Chief's report to Stalin: he sought to enforce means of fighting with male prostitution and public manifestation of homosexual intercourse (Healey, 2008: 227). But this clause is a nation-building law, as well, so long as it promoted battle with 'alien class elements' and 'social anomalies,' setting up the good Soviet citizen image, to whom does not fit homosexuality (ibid: 229-232; see, as well, Gorky, 1934).

This is the very point in time when homosexuality is being merged into the field of silence, because what we witness here is the birth of 'sovietnormativity' – a normative order of prescriptive Soviet rules of conduct based on reference to 'traditional' values of everlasting heteronormativity (see, for example, studies by Geiger, 1968, Stites, 1978, Rotkirch, 2000): 'official persecution of lesbians and gay men in Russia – whether through legal or extralegal means – took root in the systematic obliteration of privacy and individuality undertaken by the Soviets' (Gessen, 1994: 6). This normativity turned out to be gendered, hence, women were supposed to perform their traditional normative role. Lesbians, then, were subjected to compulsory medical treatment (Gessen, 1994: 17) so long as they failed to perform that role.

The Soviet 'buggers' officially lost their legal subjectivity in 1993, when amendments to the Criminal Code were issued which cancelled clause 121.1 (a more recent descendant of clause 154a). Homosexuality, then, became decriminalised once more. But the continuity of 'sovietnormativity' could not allow homosexuality to come to the surface of discourse. The hidden nature of talk on sexual matters – and homosexual matters especially – continued to govern legal and political (public) discourses in Russia.

3. *Hear the Speakers*

This brief analysis of the normative order of Russia in regard to homosexuality has been undertaken as a preliminary archaeological study of Russian legal discourse on homosexuality.² It has made it possible to draw some general conclusions as to how the normative order has been shaped: digging up the features of the order, it is possible to see which things are considered legal and illegal, which ones are considered moral and immoral, which notions are considered truthful and false. 'Sovietnormativity' constructed a certain hierarchy of discursive formations, including some within and excluding others from the enunciative reality.

This section concerns a different part of the discourse on homosexuality in Russia. I have investigated the contributions to the discourse made by the most active elements within it: Russian LGBT activists. The empirical study discussed here includes a discourse analysis of the arguments for rights which LGBT activism has produced. Taking into account the context of the activists' work,

¹ All the laws and court rulings quoted are translated by the author.

² A more detailed analysis see in Kondakov 2008 and the literature referenced therein.

I have sought to find out 'how is it that one particular statement appeared rather than another?' (Foucault, 1972: 30).

LGBT activism in Russia emerged in the era of changes, when the Soviet state was announced to be in need of transformation. Certainly, one of the most important tasks for activism at that time was the fight for decriminalisation of voluntary male homosexual intercourse. Although the correlation between actual decriminalisation and the influence of activism on this reform is not clear, some organisations were actively engaged in this debate.³ When homosexuality was decriminalised in Russia in 1993, it also marked the end of gay activism to some extent. The organisations which seemed to achieve their final aim so quickly were reconstituted as gay tourist agencies, glamour reviews, and, lately, dating web-sites, or were simply disbanded.

However, their work was important in regard to the 'invention' of homosexuality in Russia. What is 'gay' was shaped in the 1990s thanks to these organisations. But the time has come to 'reinvent' gayness in the here and now. Since 2005 one may notice a second wave of LGBT community institutionalisation: gay and lesbian organisations have been founded in Moscow, Saint Petersburg, Arkhangelsk, Tyumen, Perm, and other cities and towns in Russia. Their aims are located in the discourse of rights – they claim to fight for and protect LGBT rights, the lack of which we supposedly suffer.

An orientation towards human rights talk is a feature that defines the second wave of LGBT activism in the new Russia, and thus became a criterion of my research. I identified 15 LGBT organisations which declare the fight for rights as the main concern of their work with the community, society and authority. The other organisations – such as HIV centres, dating and tourist agencies – which also target gay men and lesbians, were not within the scope of the research, because what they provide is a service to resolve certain personal problems without entering into the political realm where the fight for rights is conducted. Discourse analysis undertaken in this research has aimed to uncover the subjectivities constructed within the rights discourse which organises the 'conduct of conduct' in the social field.

The 15 organisations are all represented on the internet. Ten of them have their own websites and another 5 maintain their web-pages in the Russian social network vKontakte (a local analogue of Facebook). The web materials provide a variety of information on strategies, events, accounts, views, places, and so forth of the organisations. I examined all of the material on these websites (including charters, reports, news items, pictures) in the search for statements that concern rights and claims for rights. What I was interested in was the argumentation made for (or against) rights. I found that 4 NGOs prioritise a rhetoric of equality in claiming for rights (GayRussia, Equality, Marriage Equality and Ural-Positive). Eight NGOs prioritise a rhetoric of tolerance (LGBT Rights, Coming-Out, Gender-L, Circle-Karelia, Krilija, LGBT-Network, Rakurs and Rainbow Syndrome). Three organisations state that protection of rights is their aim, however, their texts do not go further than this statement (LesbyPartyЯ, Maximum and Rainbow House). This analysis confirmed my initial hypothesis that rights arguments would possibly divide into two groups: tolerance arguments and claims to equality.

The purpose of the second stage of the analysis was to collect comments from the heads of these organisations on the topics of human rights, state authorities and same-sex marriage, in order to clarify some points and to double-check my initial findings. It appeared that there was a strong correlation between arguments for equality of rights, a resistant attitude towards the authorities and claims for same-sex marriage, on the one hand; and, on the other hand, a correlation between tolerance arguments, a favourable attitude towards the authorities and claims for civil partnerships (or a dismissal of this topic from the discourse altogether). The further comments were gathered in an e-mail survey. Fourteen out of the 15 organisations responded to the survey.

The discourse analysis was then continued in order to track statements back to their meanings. My aim was to find out how discourse organises its subjectivities. In this regard Foucaultian discourse analysis is very helpful insofar as it tries 'to show how institutions, practices and even the individual human subject itself can be understood as produced through the workings of a set of discourses' (Potter & Wetherell, 1994: 47). Thus, the task of analysis 'consists of not — of no longer — treating discourses as groups of signs (signifying elements referring to contents or representations) but as practices that systematically form the objects of which they speak' (Foucault, 1972: 54).

When analysing discourse in this way, one sees the effects of governmentality. The disciplinary function of governmentality is the mechanism that shapes the subjects of discourses. Foucault considered governmentality to be dispersed in a society and dependant on different sorts

³ See 'Life under the Act' (Kriliija) available from: <http://www.kriliija.sp.ru/publications2.html> [Accessed on 05.05.2010]

of powers. I believe in the Russian setting this governmental function of discourse is closely linked to state power. Wendy Brown argues that a 'full account of governmentality . . . would attend not only to the production, organization, and mobilization of subjects by a variety of powers but also to the problem of legitimizing these operations by the singularly accountable object in the field of political power: the state' (Brown, 2006: 83). Russian reality makes it even more evident that the state is a considerably influential power relevant to the organisation of the *modus vivendi* of the people in general.

Governmentality may take different forms. In this work at least two modalities of governmentality are investigated: the one that follows from silence and the one that goes together with the articulated part of the discourse. Silence organises marginalised subjects, while enunciative field shapes the marginalisation. Both modalities are reliant on the state insofar as the first is driven by it and the second is legitimised by it, as Brown suggests.

Hence, before going into details of the articulated discourse, it is necessary first to take a closer look at the silenced one. The analysis of the 'unsaid' is troubled by its very essence: what is not said is difficult to capture for interpretation. In order to do so, however, it is possible to follow a certain line of analytical actions. I have distinguished hypothetically three different elements of the unarticulated domain: 'sub-discourse', 'lack' and 'the unspeakable.'

4. The Discourse of Silence

4.1 Sub-Discursive Homophobia

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

Going back to 1993 when homosexuality was decriminalised in Russia, it is necessary to add that a discursive shift did not happen then: homosexuality was erased from the law, but its aura of illegality, of the prohibited and censored was not dismantled. Decriminalisation was a simple matter of conformism by the new Russian government with the requirements of its European partners (Gessen, 1994: 24-25). To the extent that Russia desired integration with the international 'civilised' community, it had to eliminate discriminatory legal norms such as clause 121.1. But the 'sovietnormativity' that continued to govern Russian legal discourse could not be eliminated so easily. In 1997, when the new Criminal Code was enacted, homosexuality reappeared there again.

Clause 132 of the new Criminal Code is constituted by a sub-discursive regularity: it does not punish voluntary homosexual relations, but it is specified in the clause that 'buggery' and 'lesbianism' performed with the application of violence are punishable (clause 132.1). So homosexuality is both decriminalised and subjected to the Criminal Code at the same time. Homosexual assault is separated from heterosexual assault, because these two sexualities may not be imagined as equal by the legislators: heterosexuality is meant to be normal, while homosexuality is perverse. Moreover, female homosexuality is treated equally in Russian legal discourse from this point onwards. It seems like a mockery of the 'European values' which promote gender equality throughout the world and, in particular, presumably forced Russian legislators to get rid of the criminalisation of homosexuality.

The same situation occurred in the medical discourse on homosexuality in Russia. When the authorities adopted the classification of illnesses accepted by the World Health Organization (ICD-10) in 1999, they at the same time hastened to issue a clinical manual, 'Models of Diagnostics and Treatment of Mental and Behavioural Illnesses', approved by the Order of the Minister of Health of the Russian Federation № 311. Section F65 of the Manual ('Disorders of Sexual Preference') describes the sexual norm in Russia, which, according to it, consists of heterosexuality and monogamy. And 'a disorder of sexual preference means any deviation from the norm of sexual behaviour, irrespective of its displays and intensity'.

The meaning of this sub-discourse is evident and intended: homosexuality is still abnormal, no matter what Western doctors think or prove about it. If earlier male homosexuals were regarded as criminals and lesbians were regarded as diseased, in the new democratic Russia the sex of the subject makes no difference any more: they are both diseased criminals from now on. Clause 132 of the Criminal Code and the Medical Manual seem to work in very close liaison with each other: they approve the stigmatisation of the homosexual subject and contribute to the two most important sub-discourses on sexuality – the criminal and medical ones. Homophobia is inscribed in the Russian law.

4.2 A Lack of Family

According to Foucault, 'a lack' 'instead of being inside seems to be correlative with [the enunciative] field and to play a role in the determination of its very existence' (Foucault, 1972: 124). The role of the 'lack' is to be 'a characteristic of an enunciative regularity' (ibid). What is articulated existentially lacks references to the unsaid: they determine its existence while it determines their existence at the same time. The two elements are alienated from one another. In this case, the unsaid is not meant to be unsaid, but it is essentially placed in the realm of silence.

This sort of silence may be found in Russian family law. Recognition of same-sex families has not yet been achieved in Russia. However, Russian family law does consider gays and lesbians to be its subjects in the sense that we are governed by it by being alienated from its articulated regulations. Homosexuals are subjected to the law in order to constitute the normative heterosexual monogamous family based on 'traditional' never existed dogmas.

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

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

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

Considering this and the national traditions of family that regard it as a biological union of a man and a woman, the Family Code of the Russian Federation states that the regulation of family relations is to be fulfilled – particularly – in accordance with the principles of the voluntariness of a marriage union of a man and a woman, the importance of bringing up children in a family, and care for their welfare and development (N 496-O, 2006: 3).

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

4.3 The Unspeakable Realm

The third element of silence, I suggest, is the unspeakable: the ideas that are relevant to a statement but which are left unsaid due to a normative conception of what is right and what is wrong. One knows about them only because they might be said in a different social or historical reality. Unspeakable ideas are ignored in discourse, doomed to be kept in silence. They are not meant to be deliberately silenced or censored. The silencing of unspeakable ideas is a 'social pact' between the speakers governed by the discourse itself. They organise the silent subject of the discourse by banishing it to the domain of the censored and unspeakable.

The unspeakable is discernible in the interpretations of Russian law that could be applied to protect the rights and liberties of gays and lesbians, but are never so applied. This silencing in law produces a legal reality in which there is no homosexual subjectivity despite the fact that a different reality is possible. For example, in some countries today, antidiscrimination law protects gay men and lesbians from homophobia⁴ and ombudsmen work to ensure respect for the rights of all people, LGBTs included. Hence, I examined the relevant documents concerning antidiscrimination law and the ombudsman in order to analyse the equivalent situation in Russia.

Russia has no antidiscrimination law specifically concerning 'sexual orientation.' However, what Russia has is antidiscrimination law in general. The Constitution of the Russian Federation acts to protect a 'human, his rights and liberties' (Clause 2). And the Criminal Code of Russia explicitly lists those 'humans' whose rights are protected: 'Discrimination, that is a violation of the rights, liberties or lawful interests of the human and the citizen on the ground of his sex, race,

⁴ There is antidiscrimination law in many states of Europe, South America, North America and Africa, in Australia and some others. See, for example, an ILGA report, 'State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults' by Daniel Ottoson, 2010, on: http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf [Accessed on 10.03.2011].

ethnicity, language, origin, property status and official position, abode, religion, beliefs, membership in social associations or any social groups, shall be punished...’ (Clause 136.1). This list is repeated in several Criminal Code articles. Notably, ‘sexual orientation’ or anything relevant to that notion is not listed; hence, legally speaking it may not be regarded as a ground of discrimination.

However, the term ‘social group’, which is included in the law, may be applicable to protect the rights – and even lawful interests – of lesbians and gay men. The notion of ‘social group’ is very well protected from discrimination; it is entitled to enjoy human rights, but it is legally undefined. What exactly it means to be considered a member of a ‘social group’ cannot be found in the Russian law. Therefore, it requires an interpretation from the courts to be applied to gays and lesbians. Yet, judges remain silent.

In 2007 LGBT activists tried to force the court to interpret the LGBT community in terms of a ‘social group’ recognised in the law. They claimed that a leader of the Russian Muslims had violated clause 282 of the Criminal Code,⁵ when he called for the bashing of gays and lesbians. The appeal to condemn the mufti was not accepted by the Russian prosecutors, so it did not reach the court. The prosecutors stated, based on the conclusions of a professor at Moscow University made at their request, that clause 282 could not be applied, because ‘sexual minorities are not representatives of a social group, they are a part of a deviant group together with criminals, drug addicts and other people who have different deviations from acceptable behaviour’ (Kochetkov (Petrov) & Kirichenko, 2009: 344, my translation).

This interpretation of the law may be regarded as a violation of rights in itself. And perhaps in another country the ombudsman would point this out. But the Russian ombudsman’s reports, which are supposed to discover defects of legal practice in the implementation of antidiscrimination law, ignore homosexuality: neither of his reports says a word about gay men or lesbians suffering violation of our rights. The reports always contain a number of problems which may be openly discussed:⁶ prisoners’ conditions, the routine of military service, issues of immigrants. But they never touch upon the unspeakable: the level of poverty, continuing social inequality, terrifyingly bad medical treatment, Kremlin-orchestrated arbitrary government, or gay and lesbian rights.

I wrote to the ombudsman to ask why gay and lesbian issues are never covered in his reports. In his official response to me,⁷ it is said that “there are very few complaints per year from sexual minorities” that reach his office. Therefore, “it seems unreasonable to cover this topic in every annual report.” According to the letter, the complaints usually regard bans of ‘gay-parades’ (the Prides) and refusals to provide premises to LGBT organisations. From the point of view of both domestic and international laws, these complaints fall within the domain of human rights; hence, they also fall under the jurisdiction of the ombudsman. Even though there were few complaints, this could hardly be regarded as an excuse to exclude the issues from the ombudsman’s official reports. Moreover, the small number of complaints rather testifies against trust in the ombudsman’s work on the part of the LGBT community than about the real situation around gay and lesbian problems in Russia.

What this situation shows is a kind of toleration towards homosexuality from the ombudsman and the interpreters of the law: they refrain from intervention in the status quo by being silent about homosexual issues. Hence, so long as homosexuality resides on the list of unspeakable ideas, they maintain continuity in the denial of rights. ‘Tolerance of this sort can easily coexist with ignorance and can certainly coexist with contempt’ (Phillips, 1999a: 28). So the silence prevents any knowledge about homosexuality from entering the discourse of rights. As Sarah Lambie puts it, ‘legal discourses and organisational rationalities constitute queer bodies and sexualities as unthinkable and unknowable’ (2009: 112). At the same time it should not be regarded as a matter only of the state’s intentions. Such a view fails to capture the social, institutional and political forces that also lead to unspeakability (ibid: 113-114).

5. *The Articulated Discourse*

The Russian official discourse on homosexuality is shaped by hidden homophobia, constituted by the alienation of non-heteronormative sexualities and constructed with unspeakable and ignorant ideas about the homosexual subject. In this situation the homosexual body is denied its

⁵ This clause prohibits “actions aimed at the incitement of national, racial, or religious enmity, abasement of human dignity, and propaganda of exceptionality, superiority, or inferiority of individuals by reason of their attitude to religion, national, racial affiliation, language, origin and belonging to any social group, if these acts have been committed in public or with the use of mass media.”

⁶ See, for example, ‘The Ombudsman’s Report 2009’ (issued in 2010). Available from: http://ombudsmanrf.ru/index.php?option=com_content&view=article&id=718:-2009-&catid=6:2009-11-02-08-41-14&Itemid=29 [Accessed 1 June 2010].

⁷ The response was mailed to me by the ordinary postal service, and is posted on my research web-page: <https://sites.google.com/site/russianlgbtresearch/hot-news-1/perepiskasupolnomocennym>.

existence. At the same time this other sexuality is indulged with articulation – but in terms of deviance. Hence, homosexual discourse in Russia is a discourse of sex without a body. And it should be acknowledged that the sex is perverted.

What does it mean for a subject of the discourse to be constituted of sex but not the social body, when the body is merged into the domain of the unspeakable, embraced within a normative order? I suggest that it produces two different strategies of resocialisation of the body: resistance to sex and resistance to silencing. These strategies then convene two different rhetorical discourses: the one of tolerance and the other of equality. These arguments form the discourse of the Russian LGBT organisations, as the following analysis shows.

In order to illustrate the different approaches of the LGBT organisations, I will focus on the strategies deployed to claim the right to same-sex marriage in Russia. In this regard the NGOs may be divided in two groups: a. the tolerance group consists of eight organisations whose work is dedicated to the invention of a form of same-sex marriage which will be unknowable and unnoticeable to the public; b. the equality group is represented by four organisations who claim equal legal recognition of same-sex marriage in Russia now.⁸

5.1 The Body Adjusted to the Closet

The first group is very well organised: it has a headquarters in Saint Petersburg and associated organisations in different parts of Russia. Three of these organisations are registered by the Russian authorities (being the only registered LGBT organisations in the country so far as legal recognition of anything homosexual other than in terms of perversity is concerned).

The approach of the tolerance group towards same-sex marriage is described in a booklet, 'Family Rights of Gays and Lesbians in Russia' (hereinafter referred to as 'Family Rights').⁹ The strategy expounded in 'Family Rights' is then used by the organisations' activists in their advocacy activities: a hot line on family rights is open 24/7 and monthly seminars are organised in order to explain the points of the strategy and to help gay and lesbian couples to realise these family rights in their everyday lives.

'Family Rights' is a legal manual written by the governmentality of homosexual discourse in Russia. Same-sex couples are imagined there as heterosexual bodies who experience certain difficulties in adjusting their relationships to the existing legal matrix. The text describes procedures of making one's own same-sex marriage with the legal tools in the given circumstances. In order to follow the strategy one has to acknowledge that what she does is perverted, so it must be done in the secrecy of silence. The same-sex marriage proposed in the book is a copy of heterosexual marriage: its only difference is that it is done not by a single legal action of registration, but is arranged with the help of a number of contracts which make the same-sex marriage look like its heterosexual model and at the same time do not appear on the surface at all.

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

'Family Rights' suggests how to arrange even the symbolic dimension of marriage in accordance with its heteronormative understanding. In Russia a wife is supposed to take her husband's family name and to discard her father's name when she enters into a marriage. Well, the law does not prohibit any person from doing the same: one of the partners of the same-sex family imagined in the book might change her or his name by means of the appropriate legal procedure. The homosexual bodies who enter into a same-sex marriage in accordance with the book should be homosexual to the least extent possible: they occupy the space which is left to them by the Russian legal discourse – a lacuna behind normativity and the articulated narrative.

The second chapter of the book concerns kinship. According to Russian law, a single person can adopt a child. 'Family Rights' advises that in this case it is better to be silent about your sexual orientation in front of the social workers and the court who make the decision as to whether one

⁸ This leaves three organisations unaccounted for: one of them represents an extreme queer-anarchy standpoint and acts basically through the language of art; the other two organisations seem to have an unclear position and probably exist as a feeble experiment.

⁹ 'Family Rights of Gays and Lesbians in Russia', 2009. Saint-Petersburg: LGBT-Network. Available from: <http://lgbtnet.ru/publications/lgbtfamily.pdf> [Accessed 22 April 2010].

can be a parent or not (p. 12). Homosexual couples can also resort to the help of surrogate fathers and mothers. In both cases only one partner of the family can officially become the parent of a child. The second partner may get the status of a guardian with the help of a relevant contract.

'Family Rights' shapes a same-sex marriage that has nothing to do with homosexuality: it is a marriage in which sexuality is hidden in the secrecy of the private. The homosexual body is publicly presented as a person with no sexual attitude – they are simply a legal person, a 'body corporate.' As a gay activist points out, talking about LGBT people, "it is necessary to stop considering them as somehow special; it is necessary to stop considering heterosexuality to be special, as well. Homosexuality and bisexuality are given facts of life of a society. Hence, one has to deal with it like he deals with facts."¹⁰ But what is special about homosexuals is our sexuality. Should we ignore it as tolerance arguments force us to?

'Family Rights' is constituted with the tolerance which, in Wendy Brown's words, 'is exemplary of Foucault's account of governmentality as that which organizes "the conduct of conduct" at a variety of sites' (2006: 4). The influence of the authoritative discourse on the effect that the arguments of tolerance cast is quite noticeable. This is tolerance that 'entails suffering something one would rather not, but being positioned socially such that one can determine whether and how to suffer it, what one will allow from it' (ibid: 26). It is authoritative discourse that makes possible this dimension of tolerance — 'a posture of indulgence toward what one permits or licenses, a posture that softens or cloaks the power, authority, and normativity in the act of tolerance' (ibid).

In the arrangement of a marriage in accordance with 'Family Rights' one can see the 'tolerance bargain' introduced by the powerful: the conditions of the bargain work best 'for societies in which power is relatively evenly distributed. Since toleration is most commonly called on to regulate relationships between minority and majority groups, the implied bargain is far more contentious' (Phillips, 1999b: 127). The bargain forces lesbians and gay men in Russia to exist in the lacunas of silence and to get rid of the sexualised features of homosexuality. What is left is a hollow instead of a social body. Moreover, we are supposed to recognise that our sexuality is perverse, that is why we hide it. Do we actually need LGBT activism to make us invisible if these actions are already quite successfully performed by the authorities?

5.2 *Coming-out from the Unsaid*

The other group of LGBT organisations is far less numerous. As mentioned above, it consists of four NGOs. These NGOs are less organised, they have no centre of power or registered status. The organisations are marginalised by their colleagues as well.¹¹ The main reason for this is that their position is too politicised and politicisation of the fight for gay and lesbian rights is exactly what the other group of LGBT organisations argue against.¹²

The politicisation of the equality group is conditioned by the equality arguments which they use. Equality arguments in an unequal society may appear as a discourse of resistance to the existing social and political powers (Cossman, 1994: 32). And in Russia, equality arguments are employed to claim that homosexuality should be equally respected by law. Since the existing political power fails to provide this situation, it is therefore argued that the authorities do not respect the Constitution (this is especially stressed in the Programme for Marriage Equality which will be discussed further below).

In this debate the sexuality of the subject who claims equality is important so long as homosexuality is the ground on which equality is currently denied. The homosexual body seeks visibility in the public domain of law, the body resists being understood in terms of deviation and consequently silenced. This argumentation is based on comparisons of the conditions of lesbians and gay men in Russia and other parts of the world where LGBT people are granted equal rights. The Programme of the All-Russian Movement for Marriage Equality (hereinafter referred to as 'The

¹⁰ The text is available from: <http://lgbtnet.ru/publications/mythsandfactslgbt.pdf> [Accessed 26 April 2010]. The quote is given in my translation.

¹¹ E.g., see 'And Once Again about Gay-Parade', 2009. Saint-Petersburg: Coming-Out. The publication argues against a gay pride march organised by GayRussia.Ru. A whole set of activities is evaluated in the publication. What is interesting is that the publication (like many others) is produced by an organisation from the tolerance group and directed against an organisation from the equality group. Available from: <http://piter.lgbtnet.ru/2009/06/16/infopraide-2/> [Accessed 23 April 2010].

¹² See, e.g., 'Charter of the Interregional Social Movement', The Russian LGBT-Network, 2006, art. 2.2.1, where political actions are prohibited. This Charter is chosen, because it belongs to the head organisation and its charter is replicated in those of the other friendly organisations. Available from: <http://lgbtnet.ru/news/detail.php?ID=4116> [Accessed 6 April 2010].

Programme')¹³ is crucial at this point, because it argues that same-sex marriage should be equally recognised by the Russian authorities.

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

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

The precedent may be created simply by a same-sex couple entering a registry office, claiming equality of marriage and requesting the clerks to register a same-sex marriage. When the clerks refuse, the couple goes to court. Another way would be to register a marriage in another country (e.g. Canada) and then come back to Russia and claim recognition of the marriage. This kind of legal recognition should not meet any obstacles, because recognition of foreign marriages is provided for by Russian law. The foreign marriage should meet two requirements: it should be a marriage (civil partnership doesn't count) and it should not contradict the prohibited grounds of the Family Code (where homosexuality is not listed). According to the data gathered by the NGO, this situation is quite common for foreign diplomats who come to Russia with their same-sex spouses (ibid).

'The Programme' states that activists will work to arrange such cases and bring them to the Russian courts, which will perhaps refuse to deal with them. However, they will be forced to break the silence around homosexuality in legal discourse. Moreover, the cases will be forwarded to the European Court of Human Rights. This strategy seems to reflect a relevant means of fighting against discursive silencing and lacunas. As Brenda Cossman argues, following Judith Butler, 'even when a court refuses to recognize the legal validity of the same-sex marriage or civil union, it is forced to recognize and perform the 'speakability' of same-sex marriage' (2008: 164). She then continues:

Judith Butler, in connecting the "domain of the sayable" with subjectivity, argues that "[t]o embody the norms that govern speakability in one's speech is to consummate one's status as a subject of speech." Butler further argues that prohibition in the form of censorship is often contradictory, speaking the very thing that it seeks to prohibit. "The regulation that states what it does not want stated thwarts its own desire Such regulations introduce the censored speech into public discourse, thereby establishing it as a site of contestation, that is, as the scene of public utterance that it sought to preempt (ibid).

The strategy of recognition of same-sex marriage by its non-recognition in court challenges the governmentality function of the silence of the Russian law and may be quite successful in destroying it. Coming-out from the domain of the unspeakable, same-sex marriage becomes a part of our reality. 'The marriage is real, just not in the here and now, but in the there and then. The marriages migrate, even if only in the imagination: it is migration that can now be imagined in law, even if it is not actually recognized by the courts as legally valid within their geographic and jurisprudential jurisdiction' (ibid). We, then, become truly equal, but the equality has not yet been recognised.

The difference between the two strategies used by the LGBT organisations in Russia is evident. The first follows the line of silencing governed by the powerful discourse. The second is not free from the governmentality of the discourse, but it seeks to challenge it and to resist its forces, therefore another force emerges. The first strategy adjusts homosexuality to the discursive accounts expressed in the law and politics by the continuing erasure of the homosexual body: it contributes to that erasure by diminishing the value of sexuality in the homosexual body. The body does not exist in the discourse, there is only 'perverted' sex. But if sex is also erased, what will be left?

¹³ Available from: <http://marriageequality.ru/practise/programme-of-russian-marriage-equality-movement.php> [Accessed 22 April 2010].

Fighting for visibility in the law and policies is a strategy of challenge. But it is also necessary to take into account that it is a strategy of normalisation, as well. If equality is achieved, the discourse starts to 'encourage the internal policing of group membership. The mantra of sameness that accompanies calls for inclusion ensures that couples who embrace non-normative configurations of relationships become the new second-class citizens' (Wray, 2009: 18-19). However, this situation is not relevant for the Russian 'debates' now. Neither equality, nor any attempts at normalisation are visible. What we currently experience is invisibility rather than positive changes. The strategy described aims to challenge and change existing normativity. It is not aimed to terminate it, but to reshape it: from sovietnormativity to a new one, whose features are not even debateable yet.

6. Conclusion

As Foucault argues, legal and political institutions work within a system of exclusion rather than acceptance and only the accepted can determine whether and how the others may be included; the accepted have the power to determine the 'truth' about the others (1981: 51). In other words, the authorities 'control the context': the time, place, and participants of the talk (Dijk, 2001: 303). I have shown how the homosexual body may be excluded from and silenced within the discourse by a variety of means involving the workings of governmentality, which organises the production of meanings and subjectivities.

Russian discourse on homosexual matters represents sex. It constitutes a subject without a body, so that these subjects cannot even be regarded as a social group – a right relevant only for humans made of flesh. The homosexual subject is deviant and perverted, because its existence is reduced to a number of sexual actions which are impossible to be imagined within Russian normativity. To the extent that Russia has burdened itself with the discourse of democracy and human rights, the 'deviants' imagined by Russian law cannot be hidden in a prison or an asylum. They are supposed to enjoy toleration: so long as homosexuals are hidden under discourse, they are left alone.

This total – or totalitarian – silencing (derived from homophobia, heteronormativity and toleration) provides little room for LGBT activism. The powerful discourse serves as a reference point for other discourses, therefore, what is left is resistance to it. Some LGBT organisations deploy the arguments of tolerance and resist the sexualisation of the discourse of homosexuality. But what this provokes is the erasure of any homosexual subjectivity: we have to be adjusted to the discourse in which we do not exist and are treated as ephemeral sexual objects, when at the same time the sexual part of this subjectivity is argued to be unimportant. Consequently, the homosexual body is treated within the tolerance discourse as a heterosexual one. This simply makes no sense. It does not provide for our inclusion into society, or rather, it conditions our inclusion into society by the requirement to be what we are not.

The argument of equality by the other group of LGBT organisations, which aims to resist the silencing in the discourse, appears to be a more promising strategy. However, in an unequal society, arguments for equality presuppose exaggeration of the differences between homosexual and heterosexual so long as each one is equally respected. But at the same time, these differences 'can breed a new kind of intolerance towards intransigent groups' (Phillips, 1999b: 143). This is a very possible scenario for Russia: as soon as the silence is broken, homophobia will be articulated more loudly as well. The year 2012 was marked by 'anti-gay parade' celebrated by regional governments in Russia: many local parliaments adopted the law that bans so called 'propaganda of homosexuality to the minors.' These legal innovations are brought to existence by active resistance to be silenced and their aim is to silence homosexuality back. At the same time they start to speak it at loud and open up a public discussion on homosexuality in Russia.

It should be acknowledged that these future debates will be debates about the negotiation of a new normative order, even though the negotiation does not promise to be easy going. Pronouncing homosexual discourse, making it visible and audible in the courts, may lead to this change. Equality arguments brought before judges inscribe homosexual issues into the enunciative field of legal discourse. Filling up the lacunas of this discourse with words and ideas will involve the negotiation of a new normativity meant to replace the 'sovietnormativity' whose work has been done and whose work is so deeply favoured by the Russian conservative authority.

References

1. Brown, Wendy (2006) *Regulating Aversion: Tolerance in the Age of Identity and Empire*. Princeton: Princeton University Press.
2. Cossman, Brenda (1994) 'Family Inside/Out', *University of Toronto Law Journal* 44(1): 1–39.
3. Cossman, Brenda (2008) 'Betwixt and Between Recognition: Migrating Same-Sex Marriages and the Turn toward the Private', *Law and Contemporary Problems* 71: 153–168.

4. Dijk, Teun Van (2001) 'Principles of Critical Discourse Analysis', in Margaret Wetherell, Stephanie Taylor and Simeon J. Yates (eds) *Discourse Theory and Practice: A Reader*, pp. 300–317. London: Sage.
5. Foucault, Michel (1972) *Archaeology of Knowledge*. London: Routledge.
6. Foucault, Michel (1981) 'The Order of Discourse', in Robert Young (ed) *Untying the Text: A Post-Structuralist Reader*, pp. 48-78. London: Routledge.
7. Geiger, Kent (1968) *The Family in Soviet Russia*. Cambridge: Harvard University Press.
8. Gessen, Masha (1994) *The Rights of Lesbians and Gay Men in the Russian Federation: an International Gay and Lesbian Human Rights Commission report by Masha Gessen*. San Francisco: The International Gay and Lesbian Human Rights Commission.
9. Gorky, Maxim (1934) 'Proletarsky gumanizm (Proletarian Humanism)', *Pravda (The Truth)* 140(6026): 3.
10. Healey, Dan (2008) *Gomoseksualoye vlecheniye v revolyutsionnoy Rossii. Regulirovanie seksualno-gendernogo dissidentstva (Homosexual Desire in Revolutionary Russia: The Regulation of Sexual and Gender Dissent)*. Moscow: Ladomir.
11. Kochetkov (Petrov), Igor & Kirichenko, Kseniya (2009) 'Polozheniye seksualnykh menshinstv (Situation with Sexual Minorities)', in Daniil Mescheryakov (ed) *Prava cheloveka v Rossiyskoy Federatsii: Sbornik dokladov o sobytiyakh 2008 goda (Human Rights in Russian Federation: 2008 Events Report)*, pp. 289–374. Moscow: Moscow Helsinki Group.
12. Kon, Igor (2006) *Liki i maski odnopoloy lyubvi: Lunnyi svet na zare. 2-e izdanie (Faces and masks of Same-Sex Love: Moonlight on the Dawn. 2nd Edition)*. Moscow: AST.
13. Kondakov, Alexander (2008) 'An Approach to the History of Sexual Minority Discrimination in Russia', *Sortuz* 2(2): 21-29.
14. Lamble, Sarah (2009) 'Unknowable Bodies, Unthinkable Sexualities: Lesbian and Transgender Legal Invisibility in the Toronto Women's Bathhouse Raid', *Social & Legal Studies* 18: 111-130.
15. Nabokov, Vladimir (1902) 'Plotskiya prestupleniya po proektu ugolovnago ulozheniya (Crimes of the Flesh in the Light of Criminal Code)', *Vestnik prava (Law Review)* 9-10: 129-189.
16. Phillips, Anne (1999a) *Which Equalities Matter?* Oxford: Polity Press.
17. Phillips, Anne (1999b) 'The Politicisation of Difference: Does This Make for a More Intolerant Society', in John Horton and Susan Mendus (eds) *Toleration, Identity and Difference*, pp. 126–145. New York: Macmillan.
18. Potter, Jonathan & Wetherell, Margaret (1994) 'Analyzing Discourse', in Alan Bryman and Robert G. Burgess (eds) *Analyzing Qualitative Data*, pp. 47–66. London: Routledge.
19. Rotkirch, Anna (2000) *The Man Question. Loves and Lives in Late 20th Century Russia*. Helsinki: University of Helsinki.
20. Stites, Richard (1978) *The Women's Liberation Movement in Russia: Feminism, Nihilism and Bolshevism, 1860–1930*. Princeton: Princeton University Press.
21. Wray, B. J. (2009) 'Screening Desire: Same-Sex-Marriage Documentaries, Citizenship, and the Law', *Canadian Journal of Law and Society* 24(1): 1–21.
22. Legal Documents
23. Council of a Hundred Chapters (1551).
24. The Statutes of Peter the Great (1706).
25. Criminal Code of Russian Empire (1832).
26. The Criminal Code of Russian Socialistic Federative Soviet Republic (1934).
27. The Criminal Code of Russian Federation (1997).
28. The Constitution of Russian Federation (1993).
29. The Family Code of Russian Federation (1995).
30. Section F65. Disorders of Sexual Preference. In: *Models of Diagnostics and Treatment of Mental and Behavioural Illnesses*. Minister of Health Order N 311, 1999.
31. Decision of the Constitutional Court of Russian Federation made on 16 November 2006 N 496-O.