

“Tragic and Glorious Pages”: The Evolution of Intersex Rights in Russia and Reframing Law and Tradition to Advance Reform

MAGGIE J. MEYERS*

I. INTRODUCTION

“Despite all the achievements of civilization, the human being is still one of the most vulnerable creatures on earth.”

- Vladimir Putin¹

“You are alone, you are not normal”; that is how Aleksander Berezkin learned he was intersex.² Born in 1984 in Novokuznetsk—a steel-producing town in southwestern Siberia, not unlike Pittsburgh in terms of climate and local economy³—Aleksander lived the life of an ordinary boy until his adolescence, when puberty failed to arrive. “When I was at school, my body looked visibly different from other teenagers,” Aleksander recalled.⁴ “I had no muscles . . . [n]o hair on the face. I was skinny and tall. With narrow shoulders and wide hips. Breast glands were enlarged. Sometimes people took me for a girl. I have been bullied and humiliated.”⁵ Desperate for answers and relief from the merciless taunting and social ostracism, at the age of seventeen Aleksander submitted to a genetic test that revealed the truth. While typical males have the chromosomes XY, Aleksander’s were XXY; he was diagnosed with a variation of Klinefelter syndrome, in which an extra X chromosome inhibits the body’s production of testosterone and leads to the development of stereotypically feminine traits in males.⁶ But Aleksander received little comfort from his intersex diagnosis, nor

Copyright © 2019 by Maggie J. Meyers.

* Duke University School of Law, J.D. expected May 2019.

1. Jon Swaine, *Texas Teacher with ‘Man Crush’ on Vladimir Putin Granted Rare Interview*, THE TELEGRAPH, May 23, 2011, <https://www.telegraph.co.uk/news/worldnews/europe/russia/8529353/Texas-teacher-with-man-crush-on-Vladimir-Putin-granted-rare-interview.html>.

2. Kristina Marusic, *What It’s Like To Be Intersex In Russia: “My Doctors Never Explained Anything Honestly To Me”*, NEWNOWNEXT (Oct. 23, 2017), <http://www.newnownext.com/what-its-like-to-be-intersex-in-russia-my-doctors-never-explained-anything-honestly-to-me/10/2017/>.

3. The cities are so similar that in 1992, the mayor of Novokuznetsk wrote to the mayor of Pittsburgh asking to enter into a sister city relationship. See Daniel J. Walkowitz, *“Normal Life” in the New Ukraine: The Crisis of Identity Among Donetsk’s Miners*, 61 RADICAL HIST. REV. 80 (1995). Evidently, Novokuznetsk’s request was denied. *Id.*

4. Tatiana Kondratenko, *Born Intersex*, PROSPEKT MAGAZINE, Dec. 21, 2016, <http://www.prospektmag.com/2016/12/intersex/>.

5. *Id.*

6. *Klinefelter syndrome*, MAYO CLINIC (Oct. 4, 2016), <https://www.mayoclinic.org/diseases-conditions/klinefelter-syndrome/symptoms-causes/syc-20353949>.

from the doctor who delivered it along with a cold, clinical relegation of where he belonged in Russian society: nowhere.

Intersex people are born with sex characteristics, including genitals, gonads or chromosome patterns, which do not fit binary notions of male or female bodies.⁷ There is no norm for what being intersex looks like. Someone who is otherwise ostensibly female may have male XY chromosomes, an individual who appears externally male may have internal female anatomy including ovaries and a uterus, or a child may be born with perfectly ambiguous genitalia, equally comprised of male and female components. The innumerable variations range from very minor deviations (indeed, some people may live their entire lives without ever learning they are intersex) to the unmistakable and profound.⁸ Being intersex has no bearing upon one's gender identity—an intersex person may identify as male, female, both, or neither—nor upon their sexual orientation. The United Nations estimates that up to 1.7% of the worldwide population is intersex.⁹ That works out to approximately 130 million intersex people, roughly equal to the total population of Mexico or Japan.¹⁰ Yet the frequency of people born outside the male-female binary has not necessarily translated into widespread visibility, consideration, or legal protections.

The state of intersex rights globally is in transition. Intersex infants and children are still frequently subjected to surgeries to “normalize” their anatomy: mismatched gonads are removed, too-large clitorises are cut down or extracted entirely, and wholesale sex-change operations are performed before the patient can even speak, much less give informed consent.¹¹ While parents and legal guardians are generally granted great deference in making medical decisions for their children, parental decision-making is limited by nations' interests in protecting the health and privacy of minors.¹² Two factors have made surgeries on

7. U.N. FREE & EQUAL, INTERSEX FACT SHEET 1 (2018), <https://www.unfe.org/wp-content/uploads/2018/10/Intersex-English.pdf> [hereinafter INTERSEX FACT SHEET].

8. See, e.g., INTERACT & LAMBDA LEGAL, INTERSEX-AFFIRMING HOSPITAL POLICIES (2018), https://www.lambdalegal.org/sites/default/files/publications/downloads/resource_20180731_hospital-policies-intersex.pdf [hereinafter INTERSEX-AFFIRMING HOSPITAL POLICIES].

9. INTERSEX FACT SHEET, *supra* note 7, at 1.

10. *Id.*; U.N. POPULATION DIV., WORLD POPULATION PROSPECTS 2017 (June 2017), <https://population.un.org/wpp/Download/Standard/Population/>.

11. INTERSEX FACT SHEET, *supra* note 7. The 2012 film *Intersexion* features interviews with numerous intersex people from around the world, many of whom recount their personal experiences with nonconsensual surgeries. INTERSEXION (Ponsonby Productions Limited 2012). One featured intersex advocate, Pidgeon Pagonis, explained the surgery they underwent to reduce the size of their clitoris when they were three: “[the doctors] claimed that they were going to preserve the function and the feeling, but in reality it was all about appearance, and they kind of just hacked away at it until it was out of sight and out of mind.” *Id.* Pidgeon continued, “I love being intersex, I just wish they didn’t fuck with my body so much.” *Id.*

12. E.g., INTERSEX-AFFIRMING HOSPITAL POLICIES, *supra* note 8 (“Parental rights can be tempered by the state’s right to act as *parens patriae* to protect the well-being of children.”). States can prevent parents from making medical decisions that are found to be contrary to the child’s best interests, particularly when fundamental rights are implicated. *Id.* “Parental decision-making has been limited specifically in the context of sterilization procedures for children, as the right to procreation is a

intersex children especially controversial: firstly, they are often solely cosmetic in nature and medically unnecessary,¹³ and secondly, the physical and psychological risks of such procedures are immense.¹⁴ These genital-“normalizing” procedures are often unsuccessful and irreversible, and can result in lifelong incontinence, pain, infertility, sterility, loss of sensation, and emotional trauma.¹⁵ Moreover, operations on children necessitate doctors working with smaller surface areas which will grow and change over time, further hampering the long-term success of such procedures and requiring repeated invasive examinations which can traumatize children.¹⁶ Finally, the anatomy and alterations imposed upon children by surgeons will not necessarily conform with the patient’s gender identity, contributing to mental suffering, depression, addiction, and suicide.¹⁷ In addition to the ongoing struggle for bodily autonomy, intersex people must also navigate legal structures designed without their existence in mind. They continue to face daunting barriers to changing their sex designation on identification documents, accessing adequate healthcare, and fighting discrimination in employment, education, housing, and athletics.¹⁸

Promisingly, the ethicality of “normalizing” surgeries on intersex children is increasingly contested in many developed nations, including the United States.¹⁹ While some surgeons in the world’s leading hospitals continue to perform these procedures,²⁰ they have declined in frequency, with many medical practitioners (including three former U.S. Surgeons-General) condemning such surgeries as

fundamental right and sterilization procedures have the potential for extreme abuse.” *Id.* Intersex rights advocates argue that “parental decision-making should be understood as the parents’ responsibility to support the interests of their child rather than their right to impose their own choices on their child.” *Id.*

13. *Id.* Furthermore, these cosmetic alterations are frequently rooted in outdated and heteronormative philosophy, for example prioritizing an individual’s ability to have penetrative sex over sensation or their gender identity. *Id.* Examples of medically necessary procedures would be the construction of a urethral opening if the child was born without anatomy to effectively expel urine from the body, or hormonal therapy to help a child with congenital adrenal hyperplasia regulate salt levels in their blood. *Id.* The movement for intersex rights does not seek to limit parents’ ability to consent to such medically necessary treatments on their children’s behalf. *Id.*

14. See, e.g., *id.*

15. INTERSEX FACT SHEET, *supra* note 7, at 1; see INTERSEXION, *supra* note 11.

16. INTERSEX-AFFIRMING HOSPITAL POLICIES, *supra* note 8.

17. See, e.g., INTERSEX FACT SHEET, *supra* note 7, at 1; INTERSEXION, *supra* note 11.

18. INTERSEX FACT SHEET, *supra* note 7, at 2.

19. HUMAN RIGHTS WATCH & INTERACT, “I WANT TO BE LIKE NATURE MADE ME”: MEDICALLY UNNECESSARY SURGERIES ON INTERSEX CHILDREN IN THE US, HUMAN RIGHTS WATCH, (July 25, 2017), <https://www.hrw.org/report/2017/07/25/i-want-be-nature-made-me/medically-unnecessary-surgeries-intersex-children-us>.

20. See, e.g., *Disorders of Sexual Development (DSD)*, DUKEHEALTH, <https://www.dukehealth.org/pediatric-treatments/pediatric-endocrinology/disorders-of-sex-development> (last visited Mar. 8, 2019) (advocating for a “holistic” approach to treating intersex children and cautioning parents that delaying surgery may sometimes be the best option, yet maintaining that “[i]n the appropriate setting, surgery to reconstruct ambiguous or atypical genital organs may be indicated”; available non-surgical procedures include “gentle vaginal stretching or dilation” treatments upon children, which are intended to facilitate heteronormative penetrative sex in adulthood).

medically unsound and violations of bodily autonomy.²¹ Several nations have passed legislation outlawing medically unnecessary surgeries on intersex minors,²² and international organizations including the United Nations have published guidance urging others to do so as well.²³ Intersex advocates have used social media, political campaigns, and scholarly publications to lobby, with some success, for laws protecting intersex people and recognizing intersex as an official sex designation in and of itself.²⁴

In this atmosphere of flux and—if, at times, sluggish—progress, Russia lags conspicuously behind her²⁵ fellow developed nations in the realm of intersex rights and advocacy.²⁶ Russian doctors not only are unapologetic in their championing of nonconsensual, medically unnecessary surgeries, but also acclaim them as scientific triumphs.²⁷ Censorship measures including the gay propaganda law, banning the promotion of non-traditional sexuality and relationships, prevent the dissemination of information about intersex issues and political advocacy.²⁸ And a social code of avoidance and secrecy, including an utter vacuum of antidiscrimination laws, leave many intersex Russians isolated, uninformed, and unprotected.

It was only after his genetic test at seventeen that Aleksander Berezkin learned he had been diagnosed with Klinefelter syndrome as a child, a revelation that was kept from him by both his doctors and his family.²⁹ Like so many intersex

21. HUMAN RIGHTS WATCH & INTERACT, *supra* note 19.

22. In 2015, Malta became the first country to ban medically unnecessary, nonconsensual (meaning that the patient does not have the capacity to give informed consent) surgeries on intersex children. *Id.* Other nations, including South Africa and Uruguay, have passed similar laws. *See, e.g.,* Carl Collison, *SA Joins the Global Fight to Stop Unnecessary Genital Surgery on Intersex Babies*, MAIL & GUARDIAN, Oct. 27, 2016, <https://mg.co.za/article/2016-10-27-00-sa-joins-the-global-fight-to-stop-unnecessary-genital-surgery-on-intersex-babies>; Gender-Based Violence Against Women Law, art. 22 (2018, Law No. 19580) (Uru.). In 2018, the California state legislature passed a resolution condemning nonconsensual intersex surgeries, although the bill was nonbinding legally and did not outlaw the practice. Tim Fitzsimons, ‘A Baby Cannot Provide . . . Consent’: Calif. Lawmakers Denounce Infant Intersex Surgeries, NBC NEWS, Aug. 28, 2018, <https://www.nbcnews.com/feature/nbc-out/baby-cannot-provide-consent-calif-lawmakers-denounce-infant-intersex-surgeries-n903686>. Many nations have some protections in place for intersex people, including laws against discrimination, laws facilitating the change of gender on legal documents, or laws providing for a third-gender classification outside the male-female binary, but without rights to bodily autonomy. *See, e.g.,* Norway Becomes Fourth Country in Europe to Introduce Model of Self-Determination, ILGA EUROPE (June 6, 2016), <https://www.ilga-europe.org/resources/news/latest-news/norway-introduces-self-determination>; INTERSEX FACT SHEET, *supra* note 7, at 2 (highlighting laws in Australia and Malta).

23. *E.g.,* INTERSEX FACT SHEET, *supra* note 7.

24. *See, e.g., id.*; HUMAN RIGHTS WATCH & INTERACT, *supra* note 19.

25. Personifications of the Russian nation are historically feminine. *See generally, e.g.,* JOANNA HUBBS, MOTHER RUSSIA: THE FEMININE MYTH IN RUSSIAN CULTURE (1993).

26. This is not terribly surprising considering Russia’s record on human rights generally, yet the plight of intersex Russians has been rarely studied and even more rarely grappled with in terms of developing tangible sociocultural and legal solutions.

27. *Intersex in Russia*, INTERSEX RUSSIA, <https://www.intersexrussia.org/intersex-in-russia> (last visited Mar. 8, 2019).

28. Marusic, *supra* note 2.

29. Kondratenko, *supra* note 4.

children in Russia and across the globe, Aleksander had been failed by a society that could see no use for him. Determined to change repressive Russian attitudes toward intersexuality, he became a fierce advocate of intersex and LGBT rights as a college student in Vladivostok, until harassment from both community members and local law enforcement compelled him to flee the country for political asylum in New York.³⁰ From his adopted home in the United States, Aleksander continues his mission to better the lives of intersex people in Russia;³¹ yet the task is a daunting one.

The injurious state of intersex rights in Russia is not the result of simple ignorance or prejudice alone, but a calculated departure from prior policy to advance social conformity under Joseph Stalin and the rise of the Communist Party.³² While the nations that have already enacted protections for intersex people have been motivated by genuine human rights concerns,³³ inspiring Russia to abandon its persecution of intersexuality will necessitate arguments incorporating longstanding Russian values and pride in East Slavic heritage.³⁴ Reform, at least ostensibly, must come from within.

This Note will explore how current laws and policies affecting intersex Russians are the creation of Western ideologies, and how the values and traditions that are synonymous with Russian identity actually support intersex rights. Part II will trace the legal and social status of intersex people through Russian history beginning in the 1800s, from relative protection under the tsarist aristocracy; to ubiquitous, yet fleeting, sexual liberation during the Bolshevik Revolution; to the rigid familial roles and social conformity of Stalinism, which still persists today under President Vladimir Putin. Part III will explore the current legal status of intersex people in Russia and the devastating effects that discriminatory laws and a vacuum of legal protections have on human rights in the region. Finally, Part IV will illustrate how Russian law, history, and values support the advancement of intersex rights, in order to provide potential avenues to lifesaving social and legal reform.

30. *Id.*

31. *Id.*

32. See discussion *infra* Part II, C.

33. See *supra* note 22.

34. Numerous historians and legal scholars have noted the insular and nationalistic nature of Russian society as a barrier to social progress: advances in human rights are often perceived as Western imperialism and as incongruous with East Slavic values, and thus have difficulty gaining political or social traction. See, e.g., Vikki Turbine, *Women's Human Rights in Russia: Outmoded Battlegrounds, Or New Sites of Contentious Politics?*, 31 E. EUR. POL. 326, 326 (2015) (“In their rhetoric around the need to reject ‘western values’ and protect ‘traditional Russian culture,’ the state appears to have discovered a legitimate justificatory rhetoric that enables the restriction and curtailment of human rights, particularly those of opposition activists.”); Theodore P. Gerber, *Public Opinion on Human Rights in Putin-era Russia: Continuities, Changes, and Sources of Variation*, 16 J. HUM. RTS. 314, 320 (2017) (“However, most studies of Russians’ views of democracy and civil society institutions call for skepticism that support for civil liberties would increase, given their association with liberal ideology explicitly condemned as ‘Western’ in the government’s resurgent nationalist rhetoric. While not definitive, robust support for Putin during his crackdown on human rights is suggestive that human rights—and specifically civil liberties—are low priorities for most Russians.”). Rooting arguments for modern human rights in Russian history and tradition is a solution to this problem.

II. INTERSEXUALITY IN RUSSIA THROUGH THE AGES

*“The path towards a free society has not been simple.
There are tragic and glorious pages in our history.”*

- Vladimir Putin³⁵

In 882 CE—over six centuries before the Americas were penciled into maps of the known world—the first East Slavic state, known by today’s historians as Kievan Rus’, was established in the vast, forested plain between the Ural Mountains and modern-day Poland.³⁶ By the year 1200, the capital city of Kiev hosted up to 50,000 residents, a population exceeding that of contemporary London, Prague, Naples, Ghent, Rouen, or Rome.³⁷ Kievan Rus’ was also home to cultural and technological advances—including high literacy rates, sewage systems, wooden pavement, property and inheritance rights for women, and the general disuse of capital or corporal punishment in favor of fines—which were rarities in Western Europe.³⁸ Kievan Rus’, as a formidable ancestor of the Grand Duchy of Muscovy, the Russian Empire, the Russian Soviet Federative Socialist Republic, and finally the Russian Federation, was a resounding beacon of what East Slavic civilization could achieve.

Doubtlessly, intersex Slavs have been living on the land we now call Russia for over a millennium. Intersexuality, previously called hermaphroditism,³⁹ is a biological phenomenon that has been acknowledged by innumerable cultures since antiquity. The worship of intersex deities,⁴⁰ legal classifications of sex as male, female, or “hermaphrodite,”⁴¹ and records of intersex births and individuals⁴² demonstrate that intersexuality is not an invention or exaggeration of postmodern gender theory but a constant across centuries and continents.

35. Somar Wijayadasa, *The Importance of Putin and Russia’s Presidential Election*, INDEPTHNEWS, Mar. 9, 2018, <https://www.indepthnews.net/index.php/the-world/eu-europe/1729-the-importance-of-putin-and-russia-s-presidential-election>.

36. *Kievan Rus*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/Kievan-Rus> (last visited Mar. 8, 2019).

37. GREGORY L. FREEZE, *RUSSIA: A HISTORY* 7 (3rd ed. 2009).

38. GEORGE VERNADSKY, *Russian Civilization in the Kievan Period: Education*, in *KIEVAN RUSSIA* 426 (1973); N. MIKLASHEVSKY, ET AL., *Istoriya vodoprovoda v Rossii*, in *ИСТОРИЯ ВОДОПРОВОДА В РОССИИ* 240 (2000); JANET MARTIN, *MEDIEVAL RUSSIA: 980–1584* 72 (1995); PAUL ROBERT MAGOCSI, *A HISTORY OF UKRAINE* 90 (1996).

39. The term “hermaphrodite”—originating from Hermaphroditos, the mythological two-sexed offspring of Greek deities Hermes and Aphrodite—is now widely considered to be offensive to intersex persons and has fallen out of use. See, e.g., *Intersex: Changing Terminology*, TRANSFAITH, <http://www.transfaithonline.org/empower/basics/intersex/terminology/> (last visited Mar. 8, 2019).

40. The Greek Hermaphroditos, the Egyptian Hapi, and the Chinese Lan Caihe are just a few examples. *Id.*; RICHARD H. WILKINSON, *THE COMPLETE GODS AND GODDESSES OF ANCIENT EGYPT* 107 (2003); MARGARET B. DUDA, *TRADITIONAL CHINESE TOGGLES: COUNTERWEIGHTS AND CHARMS* 70 (2011).

41. See, e.g., HENRY DE BRACON, 2 ON THE LAWS AND CUSTOMS OF ENGLAND 31 (Samuel E. Thorne trans., Harv. Univ. Press 2nd ed. 1968) (1235) (“Mankind may also be classified in another way: male, female, or hermaphrodite.”).

42. See, e.g., Alden T. Vaughan, *The Sad Case of Thomas(ine) Hall*, 86 VA. MAG. HIST. & BIOGRAPHY 146, 146–48 (Apr. 1978).

Yet their incontrovertible existence did not mean that intersex people were necessarily permitted to dwell in some grey area between the poles of male and female.⁴³ In navigating the integration of intersex people into society, Western European nations followed Roman law, which shoehorned nonbinary individuals into the category of male or female via determination of the “warmest sex.”⁴⁴ Roman parents would choose a sex for their child and raise them accordingly, and upon sexual maturation the child was given a once-in-a-lifetime opportunity to select their “warmest” or prevailing sex, which was largely determined by their attraction to the “opposite” sex.⁴⁵ This rather rigid procedure, while appealing to Western Europeans in its simplicity, did not address the complex reality of being an intersex person; narratives of intersex people dating from antiquity to the modern era are frequently wrought with confusion, reversals, and public scandals that betrayed the Roman model’s inadequacy.⁴⁶ Meanwhile, Russia, relatively sequestered by Byzantine influence and Orthodox Christianity from the legacy of Roman law, was left to her own devices.⁴⁷

A. Acknowledgement and Ambiguity in the Russian Empire

Historical and legal documents dating from as early as the eighteenth century depict how Russian doctors, political leaders, and religious institutions have wrestled with how to handle intersex citizens.⁴⁸ Russian law made no mention of intersexuality from its inception in the tenth century through the Revolution, so the legal system provided no answers to the “problem” of sexual ambiguity.⁴⁹ Indeed, despite the protestations of at least one physician—who in 1865 called intersexuality “a public and judicial question which in our opinion is of no small importance”—the Russian government consistently declined to codify the treatment or status of intersex people.⁵⁰

Officials of the Russian Orthodox Church⁵¹ would occasionally ask the Tsar for guidance when a “hermaphrodite” was discovered. In 1837, sketches of a

43. While some intersex people do identify as male or female, many experience their gender as being neither or as fluid between these two options. Thus strict categorization of intersex people as either male or female is often not reflective of psychological (or biological) realities.

44. DAN HEALEY, *BOLSHEVIK SEXUAL FORENSICS* 137, 134 (2009).

45. *Id.* at 134.

46. *Id.*

47. *Id.* at 137.

48. IRA ROLDUGIN, *INTERSEX: FROM PATHOLOGY TO NEW OPPORTUNITIES*, QUEERFEST 2013 (Saint Petersburg, 2013).

49. HEALEY, *supra* note 44, at 137.

50. *Id.*

51. The modern Russian Orthodox Church is not supportive of intersex or LGBT rights, and historically seemed to be more concerned with classifying or “normalizing” intersex bodies than the government or medical profession. *Revelations From the Russian Archives: ANTI-RELIGIOUS CAMPAIGNS*, LIBR. OF CONG., <https://www.loc.gov/exhibits/archives/anti.html> (last visited Mar. 8, 2019). Yet in Russia, the Church has always been subservient to the political state and was violently persecuted between 1918 and the 1980s, when its existence did not serve secular political ideology. *Id.* Furthermore, the Church was sometimes opportunistically used to further governmental objectives: in

“double-sexed” peasant child were sent to Tsar Nikolai I, who ordered local doctors and officials to monitor the child’s health, protect them from harm, and ultimately preserve their body for medical study upon the individual’s death.⁵² Secular authorities embraced “administrative improvisation” when intersex people were brought to their attention, sometimes obtaining a doctor’s opinion as to their sex, and sometimes ordering sex designations on birth certificates and other forms of identification to be altered.⁵³ Early Russian methodology in dealing with intersexuality was marked by social and scientific interest, yet also conscious ambivalence and a seeming lack of urgency. The autocracy of the Empire served as a sort of protective measure as well: public health was a prerogative of the Ministry of Internal Affairs and the tsars declined to give medical authorities free reign over intersex bodies.⁵⁴ Some historians have also argued that doctors may have been reluctant to pathologize intersex people and other social deviations, including LGBT individuals, because the doctors, conscious of their shared status as powerless subjects beneath the tsar, identified and empathized with such marginalized patients.⁵⁵

As technology advanced towards the close of the nineteenth century, Western Europe and the United States doubled-down on the Roman model—prioritizing the determination of which binary sex an intersex person was closest to and confining them in that role—by identifying one’s gonads as the foolproof indicator of their “true sex.”⁵⁶ The necessity of identifying “true sex” was driven in part by homophobia: the notion of an intersex person with testes inadvertently marrying a biological male was a source of shock and horror to Western sensibilities.⁵⁷ Western therapy involved invasive surgery to identify the gonads (testes or ovaries), followed by imposing the corresponding “true sex” upon the patient: people who had lived for decades as women were forcibly transformed socially and medically into men, and vice versa, leading to predictably devastating (and, in terms of a neat Romanesque remedy, inadequate) results.⁵⁸

Late tsarist Russian doctors flatly rejected the “age of the gonads,” which disregarded psychology and non-gonadal anatomy, and approached intersexuality far “more tentatively, less confident in their ability to reveal a ‘true sex’ in their patients.”⁵⁹ Fundamentally, Russian society proved more willing to

1941, for example, Stalin revived the Church to intensify patriotism and support for the war effort against Nazi Germany. *Id.* Therefore, it would seem that the Church is neither an ally nor an especially daunting adversary to human rights; it is the political climate that steers social and legal change, not the Church.

52. ROLDUGIN, *supra* note 48.

53. HEALEY, *supra* note 44, at 137.

54. *Id.* at 223 n.22; Aleksander Berezkin, *Breaking the Ice: Intersex in Russia*, INTERSEXDAY.ORG (Nov. 7, 2016), <https://intersexday.org/en/breaking-ice-intersex-berezkin/>.

55. HEALEY, *supra* note 44, at 138.

56. *Id.* at 136.

57. *Id.*

58. *Id.* at 135–36, 221 n.7 (stating that some reassigned patients resorted to suicide).

59. *Id.* at 135, 138.

acknowledge the reality of intersex people as a unique biological category, something existing between the lines of maleness and femaleness, and something that implicated a person’s whole identity rather than solely their genitals or gonads. Records show that when confronted with an intersex patient who had lived most of their life as a man, yet was found to have primarily female genitalia, both physicians and legal scholars were unwilling to pronounce them a woman; instead, the designation of “sexless” was used.⁶⁰ While “sexless” may sound insensitive to modern ears, nowhere was an intersex person safer than in a regime that allowed them to remain unique.

None of the above is intended to suggest that intersex Russians were *never* stigmatized, experimented upon, or discriminated against; the actions and prejudices of individual doctors, local communities, and citizens are often rendered invisible to the historical lens. Yet the overarching Russian approach to the “problem” of intersexuality was an acknowledgement that neither science nor law offered easy answers. Western doctors were fixated upon the pathologizing and erasure of intersexuality, hacking away at nonbinary bodies until they fit into boxes labelled “male” or “female.” Meanwhile, the attitude towards intersex Russians during the rule of the tsars can best be characterized as cautious, ambivalent, and at times gloriously modern.

B. Freedom in Revolution

In February of 1917, the Russian Empire and its centuries of rulership was dismantled virtually overnight.⁶¹ When the Bolsheviks came to power, they brought with them a determination to obliterate every relic of what they considered institutional oppression, including norms of gender and sexuality. Marriage was declared a secular (not religious) union, and divorce, abortion, and homosexuality were decriminalized.⁶² The tsarist family unit, decried as a patriarchal microcosm of oppression under feudalism and the Empire, was reinvented to accommodate personal choice, increasing rights for women and sexual minorities.⁶³ Intersex Russians benefited enormously from this socialist vision for society.

In 1918, Bolshevik leadership launched the People’s Commissariat of Health, which served as a far more permissive overseer of medical professionals than the tsars.⁶⁴ Medical technology had flourished during the First World War, and out of this innovation appeared a novel kind of patient: the intersex person voluntarily seeking medical advice and treatment.⁶⁵ Russia suddenly had something very new to offer her intersex citizens: the opportunity to choose their own social role and anatomy and to have that vision realized. Motivated both by the desire to help their patients and to advance medicine, doctors worked with intersex patients to

60. *Id.* at 138.

61. FREEZE, *supra* note 37, at 273.

62. Sean Egan, *The Bolsheviks and the Sexual Revolution*, THE IRISH MARXIST REV., <http://www.irishmarxistreview.net/index.php/imr/article/viewFile/230/221> (last visited Mar. 25, 2019).

63. *Id.*

64. ROLDUGIN, *supra* note 48.

65. Berezkin, *supra* note 54.

determine which sex matched them holistically—not just on a gonadal or genital level—and counseled them, often very cautiously, on the risks and rewards of medical treatment.⁶⁶ The progressive values of the sexual revolution permeated the medical profession’s approach to intersexuality:

Soviet doctors saw the problem as a social one, in which the reintegration of the distressed individual into a collective was the foremost priority. Stabilizing the patients’ claims to their existing social sex—their gender role as they performed it in the community—by use of cosmetic surgery made ideological and practical sense.⁶⁷

Some intersex Russians sought out doctors to remedy body dysphoria, infertility, marital discord, physical pain and discomfort, and social exclusion.⁶⁸ Some identified as one sex or the other, and wanted their anatomy to match; others saw their peers living “normal” lives, and wanted such experiences for themselves.⁶⁹ Medical records from the early socialist years reveal intersex men who sought the removal of mammary glands, intersex women who requested the widening and deepening of the vaginal canal to allow for painless intercourse, and intersex people of all identities who requested that unwanted gonads be removed.⁷⁰ Interestingly, Russian surgeons often expressed hesitance to remove larger-than-average clitorises, indicating concern for their patients’ future sexual pleasure; it was the patients, rather than the doctors, who frequently insisted on such modifications.⁷¹ Crucially, if there is any evidence of doctors seeking out unwilling intersex patients to experiment upon, it is not easily found in English-language academic literature. The Bolshevik agenda of furthering social satisfaction and integration only necessitated treating patients who wanted treatment.

Of course, medical transformations would have been a hollow victory without corresponding legal validation. In 1926, the People’s Commissariat of Health issued a circular on intersexuality, in which “[c]itizens with characteristics

66. ROLDUGIN, *supra* note 48.

67. HEALEY, *supra* note 44, at 156–57.

68. *See id.* at 142–49. It is important to distinguish here between the Western model, which involved selecting a sex for someone and imposing surgery and social roles upon them, and the pattern that emerged in Russia of intersex individuals themselves seeking out medical advice and treatment. While Western doctors were making life-altering decisions for their patients, in Bolshevik Russia intersex patients were the ones exercising agency, and their doctors were often hesitant to operate at all.

69. *Id.* at 146. It should be noted here that while being intersex is increasingly accepted to be a natural biological variation and not a “disorder,” some intersex people still choose to seek medical intervention (hormones, surgery, therapy, etc.) for a variety of reasons. Aleksander Berezkin, for example, chose to start taking testosterone supplements after he discovered he had Klinefelter syndrome. Kondratenko, *supra* note 4. As long as these treatments are fully informed and consensual, they play a pivotal and beneficial role in the pursuit of full rights for intersex people. Furthermore, the decision to pursue medical treatment is not necessarily concurrent with a renunciation of one’s identity as an intersex person. For example, one may choose to have unwanted breast glands removed, yet still identify as being a combination of sexes (or neither sex at all) as opposed to being male.

70. *Id.* at 142–49.

71. *Id.* at 152.

of hermaphroditism (two-sexed), who wish to change name and surname to correspond with the revealed sex” received the right to apply to registry offices for corrected passports, birth certificates, marriage licenses, and divorce decrees.⁷² While this process to alter documentation was imperfect—requiring a medical diagnosis of intersexuality, and for a doctor to verify the individual’s “predominance of a particular sex” (either male or female, as no third option was available)—the circular was more empowering to intersex individuals than anything seen in Russia before or since.⁷³

The advances of the late 1910s, 1920s, and early 1930s did not mean that the lives of intersex Russians were without hardship, nor that Bolshevik-inspired medicine was flawless in theory or application. Some Russian doctors used their newfound freedom under the People’s Commissariat of Health to explore the Western concept of gonads indicating “true sex,” although they quickly concluded that gonads were one aspect, rather than the ultimate indicator, of sex.⁷⁴ Furthermore, there were procedures that failed, patients who perished, and technological barriers that rendered certain results impossible.⁷⁵ Yet on the whole, early revolutionary medicine demonstrated remarkable scientific aptitude and a nuanced understanding of sex and gender. This rejection of Roman and Western conceptions of intersexuality was a staple of Russian society through changing centuries, regimes, religions, and political ideologies. It was not until the 1930s and the rise of Stalinism that this longstanding tradition was abandoned, and protections for intersex Russians were steamrolled by Western gender philosophy.

C. Conformity and Eyes Toward the West

The sun set on the Bolshevik sexual revolution in the mid-1930s, and the blaze of burgeoning intersex rights was extinguished as well.⁷⁶ Unparalleled social liberation had led to a proliferation of divorces (which quickly outpaced marriages within the same time frame), out-of-wedlock births, and the expenditure of energy through sexuality rather than collectivist labor to serve Mother Russia.⁷⁷ The totalitarian backlash, seized upon to redeem Russian society, was merciless.

The rise of Stalinism summoned a new mythology, that of the New Soviet Man, an unquestionably masculine creature that was the physical embodiment of the power of the State.⁷⁸ As the family had enabled feudalism under the tsars, Stalinism crafted the familial unit into a mechanism for social control and increased production, centering each member’s role on their function within communism: the male as the patriotic laborer and the female as the birther of

72. *Id.* at 141.

73. *Id.* While this process was not ideal in that a medical examination was necessary and the only sex designations available were male and female, it still afforded more agency to intersex individuals than they would have received in Western Europe. Intersex Russians were allowed to apply for changes to their own documents, and the medical community would consult with the individual to determine their holistic identity rather than impose a label upon them based solely on anatomy.

74. *Id.* at 156.

75. *Id.* at 157.

76. Berezkin, *supra* note 54.

77. See HEALEY, *supra* note 44, at 166–67.

78. Berezkin, *supra* note 54.

children, divisions which still exist largely unaltered in Putin's Russia today.⁷⁹ Homosexuality and abortion were re-criminalized, divorce once again became difficult to obtain, and references to intersex Russians nearly disappeared entirely from the public forum.⁸⁰ Intersexuality became a taboo topic even in medical journals.⁸¹ With their biology, expressed gender, fertility, and sexual orientation difficult to understand and shoehorn into the reimagined Russian family, intersex individuals were antithetical to the Stalinist heteronormative restrictions on bodies and behaviors. In one of his numerous scholarly works, Aleksander Berezkin noted that "[a]s an expression of human individuality and variability, intersex no longer fit into the new Soviet collective order."⁸²

Legal avenues to changing identification documents, while not eradicated completely, became increasingly difficult to access. In the 1940s, legal reform to advance "socialist legality" established that nonbinary citizens would have to apply in the courts—rather than registry offices—for document changes; this required a plethora of paperwork that usually proved prohibitive.⁸³ Much later, in 1974, a decree of the Council of Ministers of the USSR assigned the responsibility to alter passports to the issuing offices, but doctors, who were needed to certify that such changes were appropriate, voiced complaints that "mentally unstable patients" should not be permitted to trouble administrative entities with such requests.⁸⁴

Most harmfully, in the 1950s, the medical community's gaze once again settled squarely on the intersex community. Prior to the mid-twentieth century, "Russian tsarist and Soviet doctors seldom saw the infant hermaphrodite as an acute medical emergency."⁸⁵ What changed this was no Russian invention, but the work of the infamous American psychologist John Money, whose misguided research on sex and gender sent ripples across the globe.⁸⁶ John Money, practically

79. See *id.*; DENNIS SCHELLER-BOLTZ, *THE DISCOURSE ON GENDER IDENTITY IN CONTEMPORARY RUSSIA* 74–75 (25th ed. 2017). While Communist Party propaganda depicted women as laborers and direct participants in the revolution and workforce, the reality is that women under Stalinism were still expected to carry the full weight of familial and domestic duties and therefore were frequently confined within the sphere of the home. *Id.* Women who labored outside the home would find themselves working a "second shift" in the evening as the sole tenders of the household. *Id.* Men, while unquestionably the leaders of their family unit, were not to engage in childrearing or housekeeping. *Id.*

80. See, e.g., Barbara Alpern Engel, *Women in Russia and the Soviet Union*, 12 *SIGNS* 781, 788 (1987); ROLDUGIN, *supra* note 48; Berezkin, *supra* note 54.

81. ROLDUGIN, *supra* note 48; Berezkin, *supra* note 54.

82. Berezkin, *supra* note 54.

83. HEALEY, *supra* note 44, at 141–42.

84. *Id.* This shift in the allegiance of many Russian doctors, from protectors and trusted advisors to instruments of marginalization, reflects how the Russian political climate is very much a top-down phenomenon. *Id.* The central government, whether a tsar, chairman, or president, sets the agenda, and the other facets of society generally fall in line. *Id.*

85. HEALEY, *supra* note 44, at 224 n.42.

86. *Id.* John Money's research, which has been widely decried and disproven, advocated for medical intervention to assign sex to intersex patients within the first eighteen months of life. *Id.* Money theorized that gender was wholly determined by socialization, not by biology or innate psychology, and so a child could be successfully raised as either gender if its body was surgically altered and its

singlehandedly, established intersexuality as a defect to be remedied in infancy; he advocated for early and radical surgical “correction” of nonbinary anatomy.⁸⁷ It remains profoundly ironic that the greatest cruelty towards intersex people in modern Russia—nonconsensual, medically unnecessary surgeries on children that permanently impact their physical, psychological, and sexual health—was in fact a Western import.

The evolution traced above—from uncertainty and relative protection, to revolutionary self-determination, to stigma and silence, to pathologization and mutilation—leads directly to the injurious social and legal scheme in which intersex Russians now find themselves. In the gradual dismemberment of intersex rights through the twentieth century, Russia tragically abandoned the values which had often defined East Slavic civilization since Kievan Rus’: effective scientific innovation, social progress, and fierce independence.

III. THE CRUEL CURRENT STATE OF INTERSEX RIGHTS IN RUSSIA

“My personal position is that society must keep children safe.”

- Vladimir Putin⁸⁸

The modern reality of intersex rights in Russia is a bleak affair. Utterly devoid of legal protections, defined as disabled, purposefully shielded from truthful information concerning intersexuality, and prohibited from changing their sex on identification documents, intersex Russians born since the 1950s face intersexuality’s worst persecution in known East Slavic history.

A. Bodily Autonomy

In 2009 in the southern Russian city of Rostov, Oksana and her husband welcomed their child into the world.⁸⁹ Their son, whom they named Alexander,

upbringing sufficiently reinforced the desired gender. *Id.* In efforts to prove his thesis, Money did not limit his experimentation to intersex children. *Id.* After Bruce Reimer, one of two male twins, lost his penis in a botched circumcision in 1966, Money convinced Bruce’s parents that their son could not hope to function in society as a male without a penis, and that the best option was to surgically transform him into a girl. *Id.* Thus Bruce became Brenda, and was raised by his parents as a female. *Id.* Despite years of hormones, social reinforcement from his parents, and “therapy” administered by Money (which involved Money forcing Bruce and his twin Brian to simulate sexual acts on each other, roleplaying traditional “female” and “male” positions), Bruce never felt like a female. *Id.* After learning the truth from his parents as a teenager, Bruce began living as a male and adopted the name David. *Id.* Despite the obvious failure of his methods, Money continued to laud his achievements—illustrated with falsified data—to the global scientific community, in the process condemning countless children to fates similar to David Reimer’s. *Id.* Sadly, David was plagued by depression and substance abuse for the rest of his life and ultimately committed suicide in 2004. *See, e.g.,* Phil Gaetano, *David Reimer and John Money Gender Reassignment Controversy: The John/Joan Case*, ARIZ. ST. U., EMBRYO PROJECT ENCYCLOPEDIA (Nov. 15, 2017), <https://embryo.asu.edu/pages/david-reimer-and-john-money-gender-reassignment-controversy-johnjoan-case>; HUMAN RIGHTS WATCH & INTERACT, *supra* note 19.

87. HEALEY, *supra* note 44, at 224 n.42.

88. Kirit Radia, *Vladimir Putin Defends Anti-Gay Law, but Vows No ‘Problems’ for Olympic Visitors*, ABC NEWS, Jan. 19, 2014, <https://abcnews.go.com/International/vladimir-putin-defends-anti-gay-law-vows-problems/story?id=21588617>.

89. *Russian Doctors Perform Sex Change Operation on Toddler*, SPUTNIK NEWS, Nov. 29, 2011,

appeared to be an entirely unremarkable male.⁹⁰ Yet within a few days, doctors alerted Oksana and her husband that their child had “a terrible diagnosis - female pseudohermaphroditism”; while Alexander was externally male, his chromosomes and internal organs were those of a female.⁹¹ The doctors then asked Alexander’s parents if they would like to abandon him. Oksana and her husband declined and committed to caring for their child however the doctors advised. Over two years, Alexander underwent additional examinations and preparations for his gender reassignment surgery. Finally, in November of 2011, after a seven-hour procedure, Oksana brought her child home from the hospital once again: this time, as a girl named Ksenia.⁹²

It was not Ksenia, nor even her parents,⁹³ who decided her fate: it was “a consilium of specialists”—working in the shadow of John Money’s legacy, and that of longstanding Western tradition—who insisted Ksenia’s chromosomes demanded wholesale transformation of her body. Oksana expressed relief once Ksenia’s transformation was complete: “She will have to take hormones for the rest of her life, but I’m so happy that we’ve left this nightmare behind.”⁹⁴ Yet Oksana and her husband also harbored trepidation, fearing that Ksenia would one day discover the secret of her intersexuality and hoping that they had made the right choice for their child. At the time of their 2011 interview with a Russian newspaper, which applauded the surgery, two-year-old Ksenia actively rebelled against the dresses and other “female” clothes she now had to wear; the journalist noted that “[s]itting on the floor among scattered dolls, her hand still reaches for toy cars.”⁹⁵ There have been no subsequent interviews to see how Ksenia, now nearly ten years old, has adapted to the anatomy and identity chosen for her.

Ksenia’s story is not unique, nor are such nonconsensual surgeries and secrets relegated only to infants. Intersex advocate Irene Kuzemko, born in Ukraine⁹⁶ and

<https://sputniknews.com/russia/20111129169144197/> [hereinafter *Russian Doctors Perform Sex Change*]; Irina Dmitrieva, *Surgeons Changed The [Sex of] a Two-year-old Child in Rostov, LIFE* (Nov. 28, 2011), <https://life.ru/t/%D0%BD%D0%BE%D0%B2%D0%BE%D1%81%D1%82%D0%B8/75439>.

90. Dmitrieva, *supra* note 89.

91. *Id.*

92. *Id.*

93. While international health and human rights organizations maintain that any medically unnecessary surgery on intersex children is reprehensible—barring the parents from making such decisions—it is interesting to note how frequently it is not the parents, but doctors who advocate for surgical intervention. Oftentimes, parents genuinely believe they are best serving their child by following doctors’ orders to assign them as either male or female. See, e.g., HUMAN RIGHTS WATCH & INTERACT, *supra* note 19; INTERSEX FACT SHEET, *supra* note 7; but see HUMAN RIGHTS WATCH & INTERACT, *supra* note 19 (“Parents interviewed for this report who elected cosmetic surgeries on their children expressed mixed views. Some said they felt they made the decision without complete information and under pressure from doctors to accept surgery urgently, with the strong implication—or in some cases explicit explanation—that surgery was required as part of making a sex assignment on their newborn. Others said they would have elected cosmetic surgery on their children’s genitals no matter what risk types or rates the surgeons had cited to them—they wanted their children to look ‘normal.’”).

94. *Russian Doctors Perform Sex Change*, *supra* note 89.

95. *Id.*

96. While Ukraine is now a separate political entity, it was historically a part of the Russian State

now living in Moscow, was twenty-one years old when she learned she was intersex from a Buzzfeed video.⁹⁷ “From the very beginning of the video, I was so shocked . . . I was like, ‘Oh shit, that actually sounds kinda like me.’”⁹⁸ She had unknowingly had her internal gonads removed as a teenager (she was told the surgery was to “prevent cancer”), and unsuccessful treatments to prompt her body into puberty had caused pain and appendicitis.⁹⁹ Irene recalls sitting alone in hospital hallways as her father discussed her treatments with her doctors behind closed doors:

The years between 15 and 22 were really hard and depressing—I had a lot of suicidal thoughts. My doctors never explained anything honestly to me. When I would ask why my breasts still wouldn’t grow even with hormones, they always just told me I should eat more and it would happen.¹⁰⁰

Current Russian law is not simply permissive of medically unnecessary, nonconsensual surgeries and other harmful treatments for intersex people: it explicitly endorses them. Russian federal law on the Fundamentals of Protection of the Public Health recommends to parents of intersexual newborns a specific medical protocol, including surgery, based on their child’s diagnosis.¹⁰¹ While this model of treatment is slowly fading out of practice in many parts of the developed world, Russian doctors still proudly acclaim their work as a social and scientific triumph.¹⁰² In news articles, medical journals, and YouTube videos, Russian doctors boast about their mastery of the procedures and how they are the best mechanisms by which to further the patients’ social integration and mental health.¹⁰³

It is important to note that proponents of early intervention to “normalize” intersex anatomy do not necessarily have sinister motivations. Many doctors, parents, and politicians genuinely believe that by transforming an intersex child into a “normal” male or female and by concealing an intersex diagnosis from them they are sparing the child from a lifetime of bullying, self-consciousness, and lack of heteronormative sexual activity.¹⁰⁴ They believe that if the child can simply become male or female, fitting into neat philosophical boxes descending from Roman law, both society and the individual will be better off.

and shares deep East Slavic roots with Russia dating back to Kievan Rus’. See *Ukraine, The World Factbook*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/up.html> (last visited Mar. 5, 2019). Ukrainians share a political climate, religion, and culture with Russia, and the plight of intersex people is very much the same in both countries. *Id.*; Dafna Rachok, *Pustovit: We Don’t Have to Treat Intersex People Like Exotic Animals*, KRYTYKA POLITYCZNA & EUROPEAN ALTERNATIVES (Nov. 9, 2015), <http://politicalcritique.org/cee/2015/pustovit-we-dont-have-to-treat-intersex-people-like-exotic-animals/>. Some Ukrainians are therefore included in this study of intersexuality.

97. Marusic, *supra* note 2.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Intersex in Russia*, *supra* note 27.

103. *Id.*; Natalia Graf, *Was There a Boy?*, ROSSIYSKAYA GAZETA, July 14, 2016, <https://rg.ru/2016/07/14/reg-sibfo/v-omske-hirurgi-proveli-unikalnye-operacii-po-smene-pola-u-mladencev.html>.

104. HUMAN RIGHTS WATCH & INTERACT, *supra* note 19.

These theories, for lack of a more nuanced phrase, are categorically wrong.¹⁰⁵ Surgical intervention and secrecy offer no guarantees of social or anatomical “normalcy,” and carry well-documented risks. Thousands of intersex advocates from six continents have lamented the lifelong scars, both physical and emotional, that they carry from nonconsensual medical intervention. Tiger Devore, born in the United States in 1958, remembers spending summer vacations in the hospital as he suffered more than a dozen surgeries before the age of ten, procedures he calls “unnecessary failures.”¹⁰⁶ Michael Reiter of Germany was born with external male anatomy but female chromosomes—the same condition as Oksana’s child Ksenia—and recalls his furious distrust of his parents and medical professionals.¹⁰⁷ He remembers countless unwanted and invasive examinations, and felt that his parents were “conspiring” with doctors to surgically transform him into a female against his wishes.¹⁰⁸ Professor Alice Dreger of the Feinberg School of Medicine in Chicago does not foreclose the opportunity that some intersex people are happy with the nonconsensual treatment they received in accordance with Money’s research, but noted that “if they’re out there, I haven’t met them.”¹⁰⁹

Nonetheless, current Russian law remains supportive of Money’s teachings and the pathologizing of intersex bodies originating in Roman law. No laws have been construed to either ban or regulate intersex surgeries in any circumstances nor to ensure access to honest medical treatment or consultations.¹¹⁰ A federal bioethics law, proposed in 2001, would have mandated written consent by parents or guardians in cases of “gender correction” in “children up to 16 years,” but even this very minor improvement failed to pass in the Duma, the Russian legislature.¹¹¹ Yet this does not mean that Russian law is devoid of patient protections. Article 20 of The Federal Law on the Basis of Health of Citizens in the Russian Federation,

105. See, e.g., *id.*; INTERSEX FACT SHEET, *supra* note 7.

106. INTERSEXION, *supra* note 11; MALE OR FEMALE? BABIES BORN ON THE SLIDING SEX SCALE, BBC (Oct. 11, 2011). Tiger was born with severe hypospadias, which caused his urethra to be positioned at the base of his penis. MALE OR FEMALE? BABIES BORN ON THE SLIDING SEX SCALE, *supra*. While this had little adverse physical effects on his health or future sexual function, doctors pressured his parents into letting them operate so he could live as a normal male (i.e. could urinate while standing). *Id.* What was supposed to be a quick fix turned into two decades of painful surgeries, recurrent infections, and ultimately a profound lack of sensation. *Id.*

107. INTERSEXION, *supra* note 11.

108. *Id.* Michael’s ordinary male genitals were surgically refashioned into female genitals when he was a toddler. *Id.* He has never identified as female and now lives as a male, although with constant physical and emotional reminders of the agency that was seized from him in his youth. *Id.*

109. *Id.* Dr. Dreger noted that “[t]he problem with Money’s system is that when it went out into the world, a lot of people had their genitals surgically altered in ways that left them with pain, with incontinence, with reduced sexual sensation, with all sorts of problems, and very rarely with normal looking genitals.” *Id.*

110. Kondratenko, *supra* note 4.

111. Berezkin, *supra* note 54. It should be noted that this failed bill is still extremely conservative in nature, and it did not propose any sort of categorical ban on medically unnecessary surgeries or acknowledge the harm that such surgeries cause, only an expansion of parental authority. See *id.* The proposed allocation of authority to parents suggests that medical professionals sometimes take it upon themselves to “normalize” the child’s anatomy without consulting or informing the parents at all.

enacted in 2011, states that “[a] necessary prerequisite for medical intervention is giving the informed voluntary consent.”¹¹² Furthermore, Article 54 of the same Act codifies that “[m]inors over the age of fifteen . . . have the right to informed voluntary consent to medical intervention or to refuse it in accordance with this Federal Law.”¹¹³ Unfortunately, these statutes have not materialized into protections for intersex people and are frequently ignored in cases where intersexuality is implicated.¹¹⁴ Violations of these statutes have yet to be challenged by intersex advocates in a court of law, likely due to the political nature of Russian jurisprudence and a lack of confidence in the court system.¹¹⁵ Furthermore, surgeries on intersex infants and adolescents take place without any oversight by civil society organizations or ethics committees.¹¹⁶

This legal vacuum has devastating consequences for intersex Russians. In addition to the trauma stemming from the invasiveness and sometimes poor results of the surgeries themselves, there is always a risk that the patient may ultimately not identify with the sex they are assigned. Through his activism, Aleksander Berezkin “personally know[s] four Russian intersex people whose gender, chosen by a doctor in childhood, doesn’t fit their personalities.”¹¹⁷ The consequences of such crises, he observes, are alcoholism, attempted suicide, and deep depression.¹¹⁸ Aleksander’s experiences are consistent with reports generated by the UN, WHO, and other international organizations, which strongly recommend bodily autonomy for intersex children.¹¹⁹ While some nations may now allow a child to grow and determine their own sex—as Russia once did—modern Russian doctors insist that their country’s norms are fundamentally different, and that intersex rights cannot thrive there: “[w]e live completely in other realities. Therefore, doctors are forced to take responsibility”¹²⁰

Indeed, the Russian medical community continues to “take responsibility” for eradicating nonbinary variations with a lack of self-consciousness or recognition that the models under which they operate are distinctly Western in origin. In May of 2017, numerous Russian news outlets reported on Italian surgeon Roberto de Castro as he removed the clitoris of an intersex toddler in Syktyvkar, Russia and constructed an artificial vagina.¹²¹ The surgery was live-streamed to the visitors of a pediatric surgery conference; about fifty specialists were present, many of whom recorded their own videos of the surgery. These videos were

112. ОБ ОСНОВАХ ОХРАНЫ ЗДОРОВЬЯ ГРАЖДАН В РОССИЙСКОЙ ФЕДЕРАЦИИ [N 323-ФЗ] [Civil Code] art. 20 (Russ.), http://www.consultant.ru/document/cons_doc_LAW_121895/0b1cadf39ebef0f1fed2ef0b8ebab5973197d7f1/.

113. *Id.* at art. 54 (Russ.), http://www.consultant.ru/document/cons_doc_LAW_121895/a8398529a12cd9bf03edcf0f783bbf7c58d5c7cd/.

114. *Intersex in Russia*, *supra* note 27; see discussion *infra* Part IV, A.

115. Kondratenko, *supra* note 4.

116. Berezkin, *supra* note 54.

117. Kondratenko, *supra* note 4.

118. *Id.*

119. See, e.g., HUMAN RIGHTS WATCH & INTERACT, *supra* note 19; INTERSEX FACT SHEET, *supra* note 7.

120. Graf, *supra* note 103.

121. *Intersex in Russia*, *supra* note 27.

openly shared on the internet and in the Russian media. The Russian Ministry of Health praised the surgery on their website, proclaiming it “groundbreaking.”¹²²

As Western nations are slowly coming to recognize their mistakes, Russia is still emulating them. This disregard for bodily autonomy and one-dimensional understanding of sex is not only scientifically inaccurate, but also an importation of Roman, Western European, and American law and policy that is often inconsistent with historical Russian conceptions of intersexuality.

B. Intersex as a Disability

Despite growing international recognition that nonbinary bodies are a natural occurrence and not necessarily harmful to the individual,¹²³ intersexuality in Russia is legally classified as one of many “disorders of sexual development.”¹²⁴ This label of disability does not carry with it any protection from discrimination, but instead subjects intersex Russians to prejudice in employment and at both ends of the adoption process, preventing intersex children from being chosen by families and intersex adults from adopting.¹²⁵ “Disorders of sexual development,” if discovered in utero, can lead some parents to selectively abort intersex fetuses.¹²⁶ Furthermore, the cultural and legal understanding of intersexuality as a disability to be shamed and corrected contributes to the acceptance of nonconsensual surgeries.

To facilitate treatment of intersexuality as a disability, the federal government has issued five standards of care, none of which include comprehensive psychological support.¹²⁷ Instead, these standards assign different degrees of “disability” depending upon one’s diagnosis, identify procedures (including surgeries on infants) which are paid for by the government, and advise psychosexual therapy to shape identities and sexual orientation.¹²⁸ For example, a child who has been surgically assigned as male is often directed to attend free consultations with an andrologist, who coaches him on “how to behave himself as a man”; this therapy is designed to craft overtly masculine, heterosexual patients and does not allow for the possibility that the child may not identify as male or straight.¹²⁹

Furthermore, a diagnosis of intersexuality triggers secrecy and censorship. The doctor who performed Aleksander Berezkin’s genetic test counselled him to

122. *Id.*; Marusic, *supra* note 2.

123. *See, e.g.*, HUMAN RIGHTS WATCH & INTERACT, *supra* note 19; CHILDREN’S RIGHT TO PHYSICAL INTEGRITY, COUNCIL OF EUR. (2013), <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20057&lang=en>. This evolution can be paralleled to the similar recategorization of homosexuality and transgenderism.

124. *Intersex in Russia*, *supra* note 27. In the United States, intersexuality is referred to as a “Difference of Sex Development,” which is less stigmatizing than the term “disability.” *See, e.g.*, HUMAN RIGHTS WATCH & INTERACT, *supra* note 19.

125. *Intersex in Russia*, *supra* note 27.

126. *Id.*

127. *Id.*; Kondratenko, *supra* note 4.

128. Kondratenko, *supra* note 4; *Intersex in Russia*, *supra* note 27.

129. Kondratenko, *supra* note 4.

“keep it a secret and never talk about [his] identity with anyone.”¹³⁰ Before she discovered her intersexuality, Irene’s doctors bullied her when she asked questions about her body and treatments: “[t]hey seemed so scared and started asking all these questions like, ‘Do you like boys?’ ‘Do you feel like you want to be a man?’ I was so shocked by the stupidity of the questions I didn’t even answer. I was seriously depressed and I hated myself . . .”¹³¹ Without access to open and honest medical counselling, intersex Russians cannot make informed decisions regarding their healthcare and falsely believe that they are without intersex peers or global support. Secrecy did not alleviate Aleksander or Irene’s social or physical trauma, nor erase their intersexuality, as advocates of Dr. Money’s practices might hope it would; instead, it exacerbated their hardships.

This atmosphere of silence is not only cultural, but also legal. Russia’s federal law “for the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values,” referred to as the anti-gay law by Western nations, was unanimously approved by the Duma in 2013 and outlawed the dissemination of “propaganda” promoting “non-traditional” relationships or sexual orientations.¹³² While intersexuality is not explicitly mentioned in the law, positive information about nonbinary bodies is heavily censored; Wikipedia pages and other resources for intersex Russians are bare and unhelpful, and support groups are virtually nonexistent.¹³³ Intersex Russians who have not had their anatomy “normalized,” when they are acknowledged in the media at all, are portrayed as rare and grotesque.¹³⁴ Irene, now an advocate for intersex rights, keeps a playlist of news stories and television shows about “monstrous hermaphrodites” handy for when she “wants to get mad and get motivated.”¹³⁵

Furthermore, the Russian word for “intersexuality” (Romanized, *interseksual’nost’*) implicates sexual behavior or orientation rather than biology, and suffers from this association.¹³⁶ Many Russians do not understand the difference between homosexuality, transgenderism, and intersexuality and perceive them as nebulously “not normal” and intrinsically dangerous to Russian society.¹³⁷ Without an understanding of the very real physical dangers facing intersex children, the urgency of reform, or the Russian tradition of rejecting harmful and oversimplified Roman and Western law, the apathy of the Russian public is itself a daunting barrier to intersex rights. Secrecy and stigma are not just harmful at the individual level; they hinder the progress of intersex rights nationally and globally as well.

130. Marusic, *supra* note 2.

131. *Id.*

132. See, e.g., Ted Johnson, *Russia’s Anti-Gay Laws Present Challenge for NBC’s Olympics Coverage*, VARIETY, July 24, 2013, <https://variety.com/2013/tv/news/russia-7-1200567694/>.

133. Rachok, *supra* note 96; *Intersex in Russia*, *supra* note 27.

134. Marusic, *supra* note 2.

135. *Id.*

136. Berezkin, *supra* note 54; Marusic, *supra* note 2 (“Polls indicate nearly 75% of Russians believe homosexuality is ‘morally unacceptable.’”).

137. Marusic, *supra* note 2.

C. Legal Documentation

Julia Pustovit of Ukraine, the first modern intersex advocate in Eastern Europe,¹³⁸ is afraid. She is afraid to leave her home at night, afraid to visit doctors, and afraid that her true identity will never legally belong to her.¹³⁹ After years of living as a gay man, and then as a transgender woman, she finally discovered that she was intersex later in life. Since the 2000s, Julia, now forty years old, has been trying to legally change the sex on her passport from male to female, the sex she identifies more closely with. The barrier is seemingly an insurmountable one: currently under both Ukrainian and Russian law, changing one's sex designation is only possible if you are diagnosed with "transsexualism," requiring numerous medical and psychological opinions and surgical transition into one's desired sex.¹⁴⁰ Intersex people have two choices: embrace the label of transgender and submit to unwanted surgery (often for at least the second time in their lives), or remain robbed of their true identity. This choice is complicated by the fact that surgical transition into one sex or the other often involves forced sterilization, as testes, ovaries, and/or uteruses must be removed.¹⁴¹ Additionally, the removal of gonads may necessitate lifelong hormone replacement therapy, which can be costly and have dangerous side effects.¹⁴² Finally, relinquishing one's identity as intersex and becoming transgender means giving up any medical or financial benefits they received as a legally disabled person.¹⁴³

As Julia struggles to change this dilemma, she still has to live as a legal man, making her life as an intersex person, harrowing to begin with, even more challenging. When she travels, she has to explain why she is dressed as a woman.¹⁴⁴ When she gets sick, "the doctors are not interested in where I have pain but rather in why I look the way I look. And the discrepancy between my appearance and the sex in my passport makes the situation more difficult."¹⁴⁵ Julia, who dodges insults and physical threats from transphobic strangers, lives with her mother. "It's not my fault, but I feel very guilty because Julia is suffering," Julia's mother says. "I am trying to make her life easier as best as I can. Our children don't ask to come into this world. We bring them. So we are responsible for them."¹⁴⁶

Before the 1930s, Russia had a tradition of protecting intersex citizens: there was a hesitance to pathologize intersex bodies, cooperation between patients and doctors to make informed and consensual medical decisions, and accessible pathways to changing identification documents. Yet within the current legal

138. Berezkin, *supra* note 54.

139. Lexi Manatakis, *Read a Series of Moving, Real-Life Experiences From Intersex People*, DAZED (May 14, 2018), <http://www.dazeddigital.com/art-photography/article/39460/1/my-own-wings-katia-repina-carla-moral-intersex-russia-ukraine-mexico-america>.

140. *Id.*; *Intersex in Russia*, *supra* note 27.

141. HUMAN RIGHTS WATCH & INTERACT, *supra* note 19.

142. *Id.*

143. Berezkin, *supra* note 54; see discussion *infra* Part IV, B.

144. Manatakis, *supra* note 139.

145. *Id.*

146. *Id.*

scheme—originating in Western, not East Slavic, ideology—intersex Russians are frequently isolated, stigmatized, and irreparably maimed.

IV. REFRAMING RUSSIAN HISTORY, LAW, AND VALUES TO ADVANCE INTERSEX RIGHTS

*“We are all different, but when we ask for the Lord’s blessings,
we must not forget that God created us equal.”*

- Vladimir Putin¹⁴⁷

When abolitionists fought to end slavery in the United States, they did not form their arguments solely around legal analysis: they also drew upon moral justifications, religious beliefs, and historical ideals of liberty and equality to advocate for change.¹⁴⁸ Similarly, Islamic feminists and other advocates for women’s rights in the Middle East have argued that social, economic, and legal rights for women are supported by the Quran and Islamic history.¹⁴⁹ For the elevation of intersex rights to succeed in Russia, it cannot be merely legalistic or foreign in nature; change must come in the form of a homegrown movement with nationalistic roots. With an eye to East Slavic history and tradition, it becomes clear that intersex rights are not a departure from but a return to longstanding Russian values, and one that can be incorporated into existing Russian law and society.

A. Avenues to Reform Under Existing Russian Law

Russia’s legal system is best understood as civil law and generally does not place value on case precedent; courts may come to radically disparate conclusions on the same issue.¹⁵⁰ The exception to this rule is that decisions of the Constitutional Court¹⁵¹ are considered quasi-sources of law by Western scholars,

147. Aaron Blake, *Putin: America is Not Exceptional*, WASH. POST, Sept. 12, 2013, https://www.washingtonpost.com/news/post-politics/wp/2013/09/12/putin-america-is-not-exceptional/?noredirect=on&utm_term=.0eaf8aaef71.

148. See, e.g., JAMES M. MCPHERSON, *BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA* 8 (1988) (“All people were equal in God’s sight; the souls of black folks were as valuable as those of whites; for one of God’s children to enslave another was a violation of the Higher Law, even if it was sanctioned by the Constitution.”); William Lloyd Garrison, *No Compromise With Slavery*, Address at the Broadway Tabernacle, New York (Feb. 14, 1854) (“I am a believer in that portion of the Declaration of American Independence in which it is set forth, as among self-evident truths, ‘that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.’ Hence, I am an abolitionist.”).

149. See, e.g., Dr. Nahid Angha, *Women in Islam*, INT’L ASS’N OF SUFISM, <http://ias.org/sufism/women-in-islam/> (last visited Feb. 8, 2019); LIV TØNNESSEN, *ISLAMIC FEMINISM*, REG’L INST. OF GENDER, RTS., PEACE & DIVERSITY (Ahfad Univ. for Women, Sudan, 2018), <https://www.cmi.no/publications/file/5289-islamic-feminism-a-public-lecture-by.pdf>; Ursula Lindsey, *Can Muslim Feminism Find a Third Way?*, N.Y. TIMES, Apr. 11, 2018, <https://www.nytimes.com/2018/04/11/opinion/islam-feminism-third-way.html?action=click&pgtype=Homepage&clickSource=story-heading&module=opinion-c-col-right-region®ion=opinion-c-col-right-region&WT.nav=opinion-c-col-right-region>.

150. Arina V. Popova and Lev S. Solovyev, *UPDATE: A Guide to Legal Research in Russia*, GLOBALEX (Mar. 2017), http://www.nyulawglobal.org/globalex/Russia_Legal_Research1.html.

151. This is the highest court in the Russian judiciary. It handles questions concerning whether

as they are binding (even upon the President and the Duma) and cannot be challenged by any other court.¹⁵² The heart of Russian jurisprudence are statutes and the Constitution of the Russian Federation, enacted in December of 1993. No laws or other legal acts may contradict the Constitution, although interpretations of the Constitution and whether a given law is consistent with it may be argued in the Constitutional Court.¹⁵³

The Russian legal system has long faced criticisms of unjust rulings and political influence, and indeed “possesses both a statist and a pragmatic streak that have resulted in decisions that have significantly enhanced the direct and implied powers of the presidency.”¹⁵⁴ While the judiciary is ostensibly equal in power to the legislature and presidency, the courts still often act de facto as an instrument of the state, and their rulings reliably dovetail with the political climate.¹⁵⁵ Former judges, including those who served in the Constitutional Court, have publicly stated that there is no independent judiciary in Russia.¹⁵⁶ However, this does not mean that legal justifications are worthless in advancing human rights, only that they must be culturally and politically expedient as well. Once support for intersex rights can be found in Russian law, the challenge that remains is cultivating political will to enforce it.

Several provisions of the Constitution’s Rights and Freedoms of Man and Citizen provide a legal foundation for intersex rights, which activists have seized upon. Article 21 expressly provides that “[n]o one shall be subject to torture, violence or other severe or humiliating treatment or punishment. No one may be subject to medical, scientific and other experiments without voluntary consent.”¹⁵⁷ Given the well-documented medical risks associated with intersex surgeries¹⁵⁸ and the experimental nature of assigning someone a gender without knowing how they will identify later in life, medically unnecessary intersex surgeries fit squarely within the scope of Article 21. Thus, as the law requires voluntary consent before such experimentation, such surgeries should be postponed until intersex individuals are old enough to give informed consent. The Constitution also

laws are compliant with the Constitution of the Russian Federation. *Id.*

152. *Id.*

153. *Id.*

154. See, e.g., William Pomeranz & Matthew Rojansky, *Putin’s Judicial Vertical: Russian Rule of Law Takes a Step Backward*, WORLD POL. REV. (Jan. 14, 2014), <https://www.worldpoliticsreview.com/articles/13489/putins-judicial-vertical-russian-rule-of-law-takes-a-step-backward>.

155. See, e.g., Yulia Dernovsky, *Overcoming Soviet Legacy*, 17 CARDOZO J. INT’L & COMP. L. 471, 482–83 (2009) (“While the state no longer attempts to control every decision of the courts through political pressures, the cases are easily manipulated to serve the interests of the state. When it was advantageous, the executive or the legislature did not hesitate to step in and press for a decision that would be in accordance with the wishes of the political elite, rather than in accordance with the prevailing law. To put it more simply, justice is possible and even probable, but it is not assured.”).

156. E.g., Andrew Osborn, *Judges Forced Out After Accusing Kremlin of Hijacking Judiciary*, THE TELEGRAPH, Dec. 2, 2009, <https://www.telegraph.co.uk/news/worldnews/europe/russia/6711580/Judges-forced-out-after-accusing-Kremlin-of-hijacking-judiciary.html>.

157. КОНСТИТУЦИЯ РОССИЙСКОЙ ФЕДЕРАЦИИ [KONST. RF] [CONSTITUTION] art. 21 (Dec. 12, 1993) (Russ.).

158. See discussion *supra* Part III, A.

ensures that “[h]uman dignity shall be protected by the State,”¹⁵⁹ and that “[m]aternity and childhood, and the family shall be protected by the State.”¹⁶⁰ These provisions implicate the controversial consent issues entangled with the intersex rights movement: while parents are often given deference in making medical decisions for their children, the state also has an interest in protecting the health of children and the familial unit.¹⁶¹ It follows that considering the significant risks and lack of medical necessity, parents should not be permitted to consent to unnecessary “normalizing” surgeries on their children’s behalf.

Furthermore, the Constitution provides for “the equality of rights and freedoms” regardless of sex.¹⁶² If intersexuality is understood to be a distinct type of sex, as it was in tsarist and Bolshevik Russia,¹⁶³ then this provision supports antidiscrimination legislation for intersex Russians, as well as accessible documentation changes (which are provided for transgender individuals).¹⁶⁴ Moreover, all of the above-mentioned “[f]undamental human rights and freedoms are inalienable and shall be enjoyed by everyone since the day of birth,” therefore no child would be too young to receive shelter under constitutional provisions.¹⁶⁵ The bodily autonomy, legal protection, and self-determination of intersex Russians would be established from birth.

While constitutional interpretation is ultimately a political beast in Russia, intersex rights can be readily supported by the text of the Russian Constitution. Any statutes that conflict with such a reading—including recommendations for nonconsensual surgery and the federal standards—would necessarily be declared unconstitutional and void. Accordingly, intersex advocate and lawyer Ilya Saveliev has repeatedly argued that Russia’s Federal law on the Fundamentals of Protection of the Public Health, which recommends nonconsensual infant surgeries, violates the Constitution.¹⁶⁶ Ilya is careful not to contest the Public Health law generally, nor to criticize Russian law or politics as an institution; he instead couches his objections in the context of intersex rights, and the consent issues implicated therein: “[u]sually this scheme is more or less balanced, but intersex newborns are an exception. In this case, very fundamental interests of a human being are involved.”¹⁶⁷

Intersex advocates like Ilya also argue that Russia’s current position on intersex rights conflicts with international organizations in violation of Russian law and precedent.¹⁶⁸ The Russian Constitution “is far more accommodating of international law than the U.S. Constitution, and the Constitutional Court has either relied on or cited decisions by the European Court of Human Rights (ECHR)

159. KONSTITUTAIIA, *supra* note 157, at art. 21.

160. KONSTITUTAIIA, *supra* note 157, at art. 38.

161. See discussion *supra* Part II.

162. KONSTITUTAIIA, *supra* note 157, at art. 19.

163. See discussion *supra* Part III, A, B.

164. See discussion *supra* Part III, C.

165. KONSTITUTAIIA, *supra* note 157, at art. 17.

166. Kondratenko, *supra* note 4.

167. *Id.*

168. *Id.*

on numerous occasions to support its own rulings.”¹⁶⁹ The ECHR, although not as thoroughly as the United Nations or the Council of Europe, has recently acknowledged that the absence of a third gender option on identification documents and nonconsensual intersex surgeries are serious concerns that should be addressed.¹⁷⁰ Based upon previous voluntary deference to the ECHR, it would not be inconsistent for Russian law to incorporate these perspectives into its jurisprudence.

The advancement of intersex rights would not necessitate an overhaul of existing Russian law, nor would it undermine the Russian judiciary. On the contrary, intersex rights are consistent with societal concerns for informed consent, protecting children and the family, and improving human rights, which are enshrined in the Constitution and other laws. Legal precedents supporting intersex rights undeniably exist already in Russian law; the challenge is fueling political will to embrace them.

B. Moving Forward, Looking Back

In modern Russia, nationalistic ideations of the past are in vogue. Government officials have marketed themselves as present-day versions of tsars, channeling the peacemaking and stabilizing effect of successful historical rulers.¹⁷¹ The Slavic Native Faith, an ancient pagan religion that long predates the Russian Orthodox Church, has seen a healthy proliferation in recent years.¹⁷² And Vladimir Putin’s presidency has been characterized by the romanticization of Russian tradition and a rejection of the imposition of Western values on the Russian society or state.¹⁷³ In a cultural moment when history is politically expedient, progress can often be best bolstered through associations with the past.

Advancing intersex rights would be nothing new for Russia. Since Kievan Rus’, East Slavic society has valued technological innovation, social progress, and fierce independence in developing law and policy. During the Empire, Russian doctors and authorities expressed skepticism of Roman Law, which overconfidently sorted nonbinary bodies into two (ostensibly) tidy piles. During the Bolshevik Revolution, Russian doctors pioneered the perspective that intersexuality was a holistic phenomenon and worked with their patients to maximize their quality of life. It was not until the 1930s and the rise of Stalinism

169. Pomeranz & Rojansky, *supra* note 154.

170. See HANDBOOK ON EUROPEAN NON-DISCRIMINATION LAW, THE EUROPEAN COURT OF HUMAN RIGHTS ET AL. 176 (2018), https://www.echr.coe.int/Documents/Handbook_non_discrimi_law_ENG.pdf; HUMAN RIGHTS WATCH & INTERACT, *supra* note 19; INTERSEX FACT SHEET, *supra* note 7.

171. Eve Levin, *Muscovy and Its Mythologies*, 12 KRITIKA: EXPLORATIONS IN RUSSIAN & EURASIAN HIST. 773 (2001).

172. E.g., Victor A. Shnirelman, *Perun, Svarog and Others: Russian Neo-Paganism in Search of Itself*, 21 THE CAMBRIDGE J. OF ANTHROPOLOGY 18, 18 (2000).

173. See, e.g., FREEZE, *supra* note 37, at 494–95 (“Although a Europeanist, Putin none the less rejected the idea that Russia must replicate European development and insisted that it must follow its own course, that it need not obey the demands of Western countries: ‘We are a major European nation; we have always been an integral part of Europe and share all its values and the ideals of freedom and democracy. But we will carry out this process ourselves, taking into account all our specific characteristics, and do not intend to report to anyone on the progress we make.’”).

that Russia embraced the Roman model to advance greater social control and labor production, and not until the 1950s that John Money’s methods made their way ominously across the Atlantic. By accepting these foreign practices—and by refusing to abandon them when they proved ineffective—Russia did a tremendous disservice to both its intersex citizens and its legacy as an East Slavic state.

Prohibition of medically unnecessary surgeries before the patient can legally consent would be consistent with tsarist-era hesitance to pathologize intersex bodies and Russian understanding of intersexuality as a holistic phenomenon not ruled completely by gonads or chromosomes.¹⁷⁴ Transparency in medical treatment and consultations would emulate Bolshevik doctors’ role as trusted and empathetic advisors.¹⁷⁵ Legal protection from discrimination due to sex characteristics would, once again, establish the state as a protector of intersex citizens, as the tsardom was long ago.¹⁷⁶ And accessible changes to identification documents with a third-sex option would be consistent with both tsarist and Bolshevik practices facilitating document alterations, as well as recognition that being intersex could be an identity in and of itself.¹⁷⁷ Moreover, all of these reforms would symbolize a resurgence of traditional Russian rejection of Roman and Western ideologies, which have now proved medically obsolete.¹⁷⁸ This transformation—embracing surgical prowess, but only in the most appropriate and effective situations; furthering social progress not towards lawlessness but towards healthier, more productive intersex bodies; and elevating Russian innovations over those of the West—would greatly benefit both Russia’s intersex citizens and society at large.

Finally, unlike nonconsensual surgeries and rigid Roman conceptions of sex and gender, intersex advocacy is not a Western import. In 2013, Aleksander Berezkin, after consulting with Julia Pustovit, founded the Association of Russian Speaking Intersex (ARSI), the first intersex advocacy organization in the country.¹⁷⁹ ARSI has since recruited lawyers, psychologists, writers, and other professionals to help connect with intersex Russians, provide them with resources, and spread awareness of intersexuality as a natural phenomenon.¹⁸⁰ Lawyer Ilya Saveliev currently works for ARSI and attends demonstrations and conferences around the globe.¹⁸¹ And Irene Kuzemko, who first learned she was intersex through a BuzzFeed video, co-founded Intersex Russia in 2014, an organization based in Moscow that seeks to combat the isolation, stigmatization, and censorship of the intersex experience.¹⁸²

174. See discussion *supra* Part III, A, B.

175. See discussion *supra* Part III, B.

176. See discussion *supra* Part III, A.

177. See discussion *supra* Part III, A, B.

178. See discussion *supra* Part II.

179. See *About ARSI*, ASSOC. OF RUSSIAN SPEAKING INTERSEX, <http://www.arsintersex.org/home> (last visited Feb. 6, 2019).

180. *Id.*

181. *Id.*; Kondratenko, *supra* note 4.

182. Marusic, *supra* note 2.

It is noteworthy that intersex advocates do not wish to overhaul Russian jurisprudence or culture, but to advance the rights of intersex citizens that this Note asserts are already implicit in East Slavic tradition. In the meantime, intersex Russians have not resigned themselves to martyred, reclusive lives. They have seized, fiercely and innovatively, routes to truth and community in their homeland and beyond. “Learning the truth was the best thing that ever happened to me,” Irene revealed, “[a]fter all these years of not understanding what was wrong with me, for the first time in my life, I knew I wasn’t alone.”¹⁸³

V. CONCLUSION

“Everything will probably never be okay. But we have to try for it.”

- Vladimir Putin¹⁸⁴

There are tragic and glorious pages in every history. They turn forward, then lapse back, carrying with them lives that are saved or savaged in the shuffle. There are no easy answers to institutional discrimination and dismemberment. This Note does not attempt to trace the logistical steps involved in transforming Russian law to advance intersex rights. Rather, this Note illustrates that such advances would not be some newfangled foreign ideal; they would be rooted in science, socially astute, and emblematic of Russian policy through the ages. Advocates like Aleksander, Irene, Julia, and Ilya have not undertaken a mission to destroy East Slavic values, but a campaign to make their homeland survivable for up to two and a half million¹⁸⁵ intersex Russians. They have worked tirelessly—through trauma, across decades, in exile—as architects of their own destinies. Foundationally, the intersex advocates who have endured such pain and erasure are not so unlike Mother Russia herself: natural, complex, capable, and unfailingly resilient.

183. *Id.*

184. Miriam Elder, *Vladimir Putin Outdoes Himself with ‘Record-Making’ Televised Q&A*, THE GUARDIAN, Apr. 25, 2013, <https://www.theguardian.com/world/2013/apr/25/vladimir-putin-q-and-a>.

185. This figure was generated using the UN statistic that up to 1.7% of the worldwide population is intersex and multiplying the current Russian population, approximately 142 million, by 0.17. INTERSEX FACT SHEET, *supra* note 7, at 1; *Russia*, *The World Factbook*, CIA, <https://www.cia.gov/LIBRARY/publications/the-world-factbook/geos/rs.html> (last visited Mar. 5, 2019).



Aleksander Berezkin¹⁸⁶



Irene Kuzemko¹⁸⁷



Julia Pustovit, pictured with her mother¹⁸⁸



Ilya Saveliev¹⁸⁹

186. Aleksander Beryozkin (@Aleks47XXY), TWITTER, <https://twitter.com/Aleks47XXY>.

187. Intersex Russia, FACEBOOK, <https://www.facebook.com/intersexrussia/>.

188. Manatakis, *supra* note 139.

189. Association of Russian-Speaking Intersex, FACEBOOK, <https://www.facebook.com/ARSIintersex/>.