

## BOOK REVIEW

THE DEEPENING DARKNESS: PATRIARCHY, RESISTANCE, & DEMOCRACY'S FUTURE. By Carol Gilligan & David A.J. Richards. New York, N.Y.: Cambridge University Press. 2009. Pp. 339. \$29.99 (cloth).

*The Deepening Darkness: Patriarchy, Resistance, and Democracy's Future* is a thought-provoking exploration of the interplay between psychology, gender, and politics. Analyzing history, literature, and developmental psychology through a gendered lens, authors Carol Gilligan and David A.J. Richards conclude that both patriarchy and totalitarianism in Western society are perpetuated by disruption of egalitarian relationships—particularly sexual ones—and enforcement of militaristic, hierarchical norms that stifle individual voice. Conversely, the authors further conclude that resistance to disruption of interpersonal relationships plays a crucial role in resistance to patriarchal and totalitarian norms. *The Deepening Darkness* also offers striking insights into the ways in which the competing trends of patriarchy and resistance affect contemporary issues in American and global politics. Although this discussion of contemporary issues is relatively brief and lacks the depth found in the historically-oriented sections of the book, it serves well as a thought-provoking call to further discussion and research. Thus, *The Deepening Darkness* is best read as a question in book form, offering a set of background facts and principles, but ultimately inviting the reader to decide “[w]hat is it you would see?”<sup>1</sup>

### I. OVERVIEW

Gilligan and Richards's thesis is ambitious. Drawing on an analysis of history, psychology, and literature, the authors argue that patriarchal norms in the private sphere, such as sexual repression and family hierarchy, are the mechanisms by which patriarchy's more public manifestations, such as violence and social inequalities, are perpetuated.<sup>2</sup> Thus, patriarchy is not merely a matter of inequality between the sexes, but rather a broad-reaching social mechanism that perpetuates other social and political inequalities, and stifles dissenting calls for equality.<sup>3</sup> Prospective autocrats, from Augustus Caesar to the Catholic Church to domineering fathers across societies, achieve moral dominion over others by breaking up loving relationships, especially those that are sexual in nature.<sup>4</sup> These traumatic breaks have two related consequences. First, individuals suffer emotional disruption, includ-

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<sup>1</sup> CAROL GILLIGAN & DAVID A.J. RICHARDS, *THE DEEPENING DARKNESS: PATRIARCHY, RESISTANCE, AND DEMOCRACY'S FUTURE* 1, 263 (2009).

<sup>2</sup> *Id.* at 21.

<sup>3</sup> *See, e.g., id.* at 266.

<sup>4</sup> *See, e.g., id.* at 22–25 (explaining that patriarchy in both public and private spheres in Roman society was perpetuated through traumatic disruption of relationships); *id.* at 265–66 (emphasizing the role of sexuality in this process).

ing alienation from one's own voice and memory, and loss of the ability to empathize with others. This alienation is "covered" by identification with the abuser—be it the State, the Church, or the father—and its value system,<sup>5</sup> a loss of ethical independence that the authors refer to as "moral slavery."<sup>6</sup> The disruption and identification with those in power prime individuals for life within an autocratic, militaristic, and male-dominated society: their loyalty to the state and loss of ethical independence makes them ideal soldiers, stifles any dissenting voice they may have, and enables them to perpetuate their condition by sacrificing their own children to the same traumatic process.<sup>7</sup> Moreover, patriarchal norms themselves favor autocracy over democracy—democracy "defines legitimate politics in terms of the equal voice of those subject to political power," whereas patriarchy favors hierarchical structures that deny and suppress resisting voices.<sup>8</sup>

*The Deepening Darkness* takes care to frame patriarchy as a political issue, rather than merely as a domestic or personal one, that harms both men and women. For example, Gilligan and Richards stress that "[i]t is important to take seriously the suffering that patriarchy inflicts on men as well as women, in particular, highly sensitive, ethically demanding men who experience sex under its terms as lacking the companionship they associate with friendship and the affection of equals."<sup>9</sup> Gilligan and Richards's feminist project is not simply about increasing women's power (at the implicit expense of men), but about more profoundly altering how power works in society.

Despite the passion with which the authors denounce patriarchy, their theory is refreshingly situationist:<sup>10</sup> the root of violence, totalitarianism, and unfair discrimination lies not in the scheming minds of an evil misogynist, racist, totalitarian cabal, they claim, but in trauma caused by social institutions, particularly the "Love Laws" that "constrain whom and how much we may love."<sup>11</sup> Thus, the book's treatment of some of the architects of patriarchal norms and institutions, from Augustus to Mussolini, is very humanizing.

However, such treatment can at points be seen as overly reductionist: by pathologizing positions or beliefs that they associate with patriarchy, the authors risk alienating readers who are sympathetic to those positions, in-

<sup>5</sup> *Id.* at 25.

<sup>6</sup> This term is defined as "the abjection of people deprived of any voice to challenge their subjection." *Id.* at 72.

<sup>7</sup> *See id.* at 25.

<sup>8</sup> *Id.* at 31–32.

<sup>9</sup> *Id.* at 112.

<sup>10</sup> For a discussion of situationist theory, see Jon Hanson & David Yosifon, *The Situation: An Introduction to the Situational Character, Critical Realism, Power Economics, and Deep Capture*, 152 U. PA. L. REV. 129 (2003).

<sup>11</sup> GILLIGAN & RICHARDS, *supra* note 1, at 19–20 (using the term "Love Laws" coined in ARUNDHATI ROY, *THE GOD OF SMALL THINGS* 33 (HarperCollins Flamingo 1998), for those laws dictating "who should be loved, and how. And how much.").

cluding, for example, pro-life feminists, certain progressive Catholics, and anti-Zionists who do not consider themselves anti-Semitic.<sup>12</sup>

Moreover, while the eclectic approach the authors use to support their thesis allows the book to appeal to a variety of readers and provides strong—but not flawless—support for the book’s thesis, it also has the effect of shortening each section to the point that it is somewhat unsatisfying. If the book were grounded in only one discipline, it would not adequately describe a phenomenon that touches so many spheres of human life. However, the book’s thesis and methodology are so expansive that it could easily have been several books, and it can read like a series of synopses of longer essays, touching on a variety of the themes in the authors’ previous works.<sup>13</sup> This is particularly the case in the book’s discussions of contemporary politics, which can be disjointed.<sup>14</sup> Moreover, some of the authors’ arguments, particularly on contemporary topics, may be insufficiently fleshed out or nuanced. For example, as I discuss later in Part IV of this Review, the authors discuss the current “War on Terror” and global hostility to Israel, but do so primarily in terms of the influence of patriarchal norms on the United States and on Muslim countries. Despite the authors’ extensive discussions of Judaism elsewhere, this analysis omits any meaningful discussion of the important role of patriarchal, militaristic trends in Israeli culture and politics.

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<sup>12</sup> See, e.g., *id.* at 244–46 (discussing the movement to overturn *Roe v. Wade* as a movement to control women’s reproduction rather than, as some pro-life activists would argue, to protect a powerless minority (i.e., the unborn)); *id.* at 102–18, 150–58 (linking Augustine’s and the Catholic Church’s attitudes toward sexuality and celibacy to patriarchy, anti-Semitism, homophobia, and sexual abuse); *id.* at 256–57 (characterizing opposition to Israel’s existence as rooted in patriarchy and anti-Semitism).

<sup>13</sup> In particular, the book evokes themes found in CAROL GILLIGAN, *IN A DIFFERENT VOICE* (2d ed. 1993) (discussing the influence of gender on moral development) and CAROL GILLIGAN, *THE BIRTH OF PLEASURE* (2002) [hereinafter GILLIGAN, *THE BIRTH OF PLEASURE*] (discussing the effects of patriarchy on the ability to develop intimate relationships, and including a discussion on Apuleius’ *Metamorphoses*), as well as DAVID A.J. RICHARDS, *TRAGIC MANHOOD AND DEMOCRACY: VERDI’S VOICE AND THE POWERS OF MUSICAL ART* (2004) (discussing the tension between patriarchy and democracy as seen through Verdi’s operas), and DAVID A.J. RICHARDS, *DISARMING MANHOOD: THE ROOTS OF ETHICAL RESISTANCE* (2005) [hereinafter RICHARDS, *DISARMING MANHOOD*] (discussing the roots of men’s resistance to patriarchal norms of masculinity).

<sup>14</sup> For example, a discussion of the Civil Rights Movement’s resistance to patriarchal racism is directly followed by an analysis of the patriarchal origins of the Catholic priest abuse scandal. GILLIGAN & RICHARDS, *supra* note 1, at 151. Moreover, readers who are not already quite familiar with subjects such as Roman history, Freud’s case histories, the development of the “new natural law” theory within the Catholic Church, and the works of Woolf, Hemingway, Joyce, and D.H. Lawrence may find themselves tempted to do extra reading in order to get a fuller picture of each topic. Some of these topics are treated in greater depth in other books by the authors. See, e.g., GILLIGAN, *THE BIRTH OF PLEASURE*, *supra* note 13 (discussing in depth many literary sources, including Apuleius’ *Metamorphoses*); NICHOLAS BAMFORTH & DAVID A.J. RICHARDS, *PATRIARCHAL RELIGION, SEXUALITY, AND GENDER: A CRITIQUE OF NEW NATURAL LAW 1* (2008) (criticizing new natural law, a relatively recent theory promulgated by some influential thinkers within the Catholic Church; new natural law condemns, among other things, contraception, abortion, and all nonmarital sex, including lesbian and gay sexual activity).

There are also dimensions along which the book's scope is quite limited. For example, when non-Western cultures are discussed, they are primarily discussed from a postcolonial perspective, focusing on the ways in which Roman-influenced European colonial powers perpetuated or created patriarchal institutions in those societies.<sup>15</sup> The book's failure to discuss patriarchal cultures that were not influenced by the Roman empire, such as ancient non-Western cultures, makes it impossible to determine which of the authors' insights on sexual repression, trauma, and patriarchy are universal, and which are culturally contingent. However, as discussed below, what the authors lack in generalizability, they make up for in close analysis of patriarchy in a number of cultures that have radically influenced our own.

## II. PATRIARCHY AND ITS ROOTS

The authors begin their analysis of patriarchy with the end of the Roman Republic and the beginning of the Roman Empire. Because this point in history was a turning point in the struggle between democratic and autocratic trends in Roman politics, it provides a fertile ground for analysis of the methods through which autocracy is entrenched. The authors then turn to the time of Augustine of Hippo (also known as St. Augustine), analyzing the mutual influence of the patriarchal ideologies of the Roman Empire and the Catholic Church on one another. Finally, the authors discuss the impact that Augustus and Augustine have had on Western history and thought, from Freud's theories to the rise of fascism in twentieth-century Italy.

### A. *The Roman Empire*

*The Deepening Darkness* argues that the cohesion of society during the Roman Republic had, until this point, been sustained by its constant military expansion, which had united Roman citizens in furtherance of a common goal.<sup>16</sup> The "extraordinary belligerence"<sup>17</sup> of Roman men, in turn, was sustained through the extremely patriarchal nature of Roman culture: all priests and politicians were male, and fathers had unlimited control over their wives and children, even after they had reached adulthood.<sup>18</sup> Regardless of any individual father's treatment of his wife and children, the power granted to him by law placed "a form of oppression at the center of intimate life," disrupting family intimacy.<sup>19</sup> The frequent absence of fathers—due to par-

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<sup>15</sup> See GILLIGAN & RICHARDS, *supra* note 1, at 249–50 (acknowledging the book's primarily Western focus and responding to this concern with a subchapter titled "The Impact of Western Colonialism in Asia and the Middle East," which primarily discusses patriarchy in India from a post-colonial perspective).

<sup>16</sup> *Id.* at 22–23, 31.

<sup>17</sup> *Id.*

<sup>18</sup> See *id.* at 23–25.

<sup>19</sup> See *id.* at 25.

ticipation in war, death in battle, or death from old age—further hindered the development of intimate bonds between fathers and children.<sup>20</sup>

Because fathers were frequently absent, mothers also played an important role in inculcating patriarchal norms in their own children. Roman women were encouraged to be disciplinarians, not “indulgen[t],”<sup>21</sup> and in fact were often perceived by their sons as “feminine bullies,” drawing their anger and resentment.<sup>22</sup> In the absence of a loving, close relationship with their same-gender parents, sons were encouraged to identify with their fathers’ *honor* instead of the fathers themselves, replacing intimacy with identification with patriarchal and military norms.<sup>23</sup>

Even as adults, Roman men and women often did not form loving relationships with each other, as marriages were frequently arranged—and dissolved—for purely political purposes.<sup>24</sup> Although Roman men frequently took extramarital lovers,<sup>25</sup> they were also fiercely protective of women’s chastity, making it particularly difficult for Roman women in arranged marriages to develop loving sexual relationships.<sup>26</sup> Much as sons responded to the loss of loving relationships with their fathers through identifying with strict honor codes, women responded to the disruption in their intimate adult lives through identifying with their own honor-based requirements: chastity and disciplined childrearing.<sup>27</sup>

Finally, Roman culture differed from the similarly male-dominated Athenian culture in that it suppressed resisting speech. While Athenian tragedies frequently illustrated the costs of Greek patriarchal norms, Roman entertainment tended to reinforce Rome’s “militaristic ethos,” and Roman political debate, even in the Senate, was heavily regulated.<sup>28</sup>

The violence inherent in Roman culture increasingly turned inward when it defeated its most powerful enemies, such as Carthage.<sup>29</sup> Roman men, who could no longer satisfy their “passion for patriarchal order and status” through wars against a common enemy, turned to internecine con-

<sup>20</sup> See *id.* at 26.

<sup>21</sup> See *id.* at 29–30 (citing SUZANNE DIXON, *THE ROMAN MOTHER* 145 (1990)).

<sup>22</sup> See GILLIGAN & RICHARDS, *supra* note 1, at 30 (citing CORNELIUS TACTITUS, *THE ANNALS OF IMPERIAL ROME* 34 (Michael Grant trans., Penguin Classics 1996)).

<sup>23</sup> See GILLIGAN & RICHARDS, *supra* note 1, at 26.

<sup>24</sup> See *id.* at 26–27. For example, Octavian placed his daughter Julia in three successive political marriages; not only did Julia dislike her third husband, but that husband himself had been coerced into divorcing a woman he loved in order to marry Julia. See *id.* at 27.

<sup>25</sup> See, e.g., *id.* at 45 (discussing Augustus’ rage at his daughter’s adulterous behavior despite his own affairs); see also *id.* at 38 (describing Romans’ general tolerance of Marc Antony’s numerous sexual affairs).

<sup>26</sup> See *id.* at 28–29.

<sup>27</sup> See *id.* at 28–30.

<sup>28</sup> See *id.* at 32 (comparing Athenian theater, which frequently exposed the “tragic costs” of patriarchal policies, with Rome’s gladiatorial contests, which generally served to glorify Rome’s militaristic ethos, and its deep skepticism of theater).

<sup>29</sup> See *id.* at 30–31.

flicts.<sup>30</sup> One example of this phenomenon is the struggle for power between Julius Caesar and Pompey, men who were both thoroughly preoccupied with their personal status.<sup>31</sup>

In response to the resulting civil wars, Octavian, who later became Augustus Caesar, attempted to restore stability by replacing Rome's democracy with autocratic rule in which citizens were united around traditional patriarchal norms rather than around democratic institutions.<sup>32</sup> To achieve this end, Octavian cemented his own dictatorial power through recasting Rome's central identity as a patriarchy, rather than as a republic.<sup>33</sup> To ensure conformity with his program, Augustus encouraged Romans to unite against inner enemies, particularly those who did not accept Rome's patriarchal way of life.<sup>34</sup> Thus, the "enemies" of Rome were no longer prospective dictators—such as Julius Caesar—but rather those who did not conform to patriarchal demands that, conveniently, included submission to the emperor's nearly unlimited power.<sup>35</sup> Octavian's political opponents—including Marc Antony, with whom Octavian originally shared power—were painted as both sexualized and unmanly (or unwomanly).<sup>36</sup>

To reinforce these patriarchal norms, Octavian (now Augustus) enacted a system of intrusive laws governing family life that coerced subjects into "appropriate" arranged marriages, criminally punished adultery, and further cemented the plenary power of fathers and husbands over their children and wives.<sup>37</sup> This system reentrenched the patriarchal family structure that prevailed during the Republic, resulting in shallow family attachments; moreover, it increased the difficulty of replacing those attachments through extramarital relationships, particularly for women.

The story of Augustus' own daughter, Julia, illustrates the devastating effects of these laws. Forced by her father into a series of marriages intended to advance his political goals, Julia became notorious for her many extramarital lovers, including the son of Marc Antony, Augustus' defeated

<sup>30</sup> See *id.* at 31.

<sup>31</sup> See *id.* Although the authors portray Julius Caesar as an example of resistance to patriarchal demands—for example, he refused to obey an order to divorce his wife—and imply that Caesar's assassination was a response to this resistance, his willingness to turn to civil war in response to an "unjust threat to his dignity" belies this claim. See *id.*

<sup>32</sup> See *id.* at 44 (discussing Augustus' belief that neglect of "ancient patriarchal religious practices" had been responsible for the civil wars); see also *id.* at 41, 50.

<sup>33</sup> See *id.* at 33, 41.

<sup>34</sup> See *id.* at 41 (noting that "Octavian's success, as Augustus, turned at crucial points . . . on the way . . . that he aggressively used the gender ideology of Roman patriarchy against his enemies, in particular, Antony"); see also *id.* at 34–35 (discussing Octavian's role in the proscriptions following Julius Caesar's murder, in which a number of prominent Roman men were declared public enemies and subsequently murdered).

<sup>35</sup> See *id.* at 35–41 (discussing various propaganda campaigns focusing on their targets' nonconformity to patriarchal sexual norms).

<sup>36</sup> See *id.* at 36 (discussing the Catilinarian conspiracy); *id.* at 37–41 (discussing sexualized propaganda against Antony, which focused on his passionate, egalitarian relationship with Cleopatra).

<sup>37</sup> See *id.* at 42–43.

rival.<sup>38</sup> Augustus, viewing such conduct as tantamount to treason, brought criminal charges against her; she was exiled, as were all of her lovers except for the son of Marc Antony, who was executed.<sup>39</sup> Later, when Julia's daughter was also accused of adultery, she too was exiled for twenty years.<sup>40</sup> The authors argue that such interference with individuals' abilities to form free sexual attachments, both through marriages entered by choice and through extramarital relationships, deprived them of an opportunity to resist patriarchal norms and made possible the "supine and sycophantic citizenry that would accept 'peace and the Principate.'" <sup>41</sup>

Augustus himself found inspiration for his society—and for his ideal of manhood—in Vergil's *Aeneid*, which he personally commissioned.<sup>42</sup> The *Aeneid*'s protagonist, Aeneas, begins the epic as a family man, fleeing Troy with his son and instructions from his father to found a "new Troy" somewhere else.<sup>43</sup> On the way, he is swept off-course and onto the shores of Carthage, where he meets and falls in love with Dido, Carthage's reigning queen.<sup>44</sup> Dido is smitten by Aeneas and willing to share her power with him as co-regents—they even marry—but Aeneas is forced to leave when the gods remind him of his mission to found a new Troy.<sup>45</sup> Although this parting is traumatic for both lovers, only Dido directly challenges the gods' commands, while Aeneas obediently leaves Carthage.<sup>46</sup> Angry and grief-stricken, Dido commits suicide;<sup>47</sup> Aeneas, described as a "pious" and loving man when he left Troy carrying his father on his back and leading his young son by the hand, goes on to fulfill his destiny to rule Rome through a series of savage, nearly remorseless, killings and marriage to a woman whom he barely knows.<sup>48</sup>

Augustus' ideal man is therefore one who is willing to forgo personal ties in order to fulfill his duties to his father (who instructed him to found a new Troy), the gods, and his country; however, as Vergil points out, he is also one who has lost the capacity for empathy and is therefore capable of

<sup>38</sup> See *id.* at 43–45.

<sup>39</sup> See *id.* at 45–46.

<sup>40</sup> See *id.* at 49. At around the same time, Augustus also exiled Ovid, an erotic poet who had not been complicitous with the scandal, as a "demonstration" that such degenerate poetry would not be tolerated. See *id.*

<sup>41</sup> *Id.* at 47–48.

<sup>42</sup> See *id.* at 59–60.

<sup>43</sup> See *id.* at 53–54, 61.

<sup>44</sup> See *id.* at 62–63. The parallel between Dido and Cleopatra, the wife of Augustus' co-ruler and political enemy, Antony, was most likely intentional. See *id.* at 53.

<sup>45</sup> See *id.* at 63–67.

<sup>46</sup> See *id.* at 66–68. Throughout the epic, the only consistently resisting voice among the gods is that of Juno, the goddess of marriage, who expresses her anger at Dido's abandonment by fomenting the violence that accompanies Aeneas' subsequent takeover of Rome. See *id.* at 78–80.

<sup>47</sup> See *id.* at 68–69.

<sup>48</sup> See *id.* at 72–75.

extreme violence.<sup>49</sup> As in the *Aeneid*, the increasingly autocratic and patriarchal nature of Roman society did not eliminate the violence of the civil wars, but instead exacerbated it.<sup>50</sup>

### B. Augustinian Christianity and Sexual Repression

Gilligan and Richards argue that Roman patriarchal norms were later adopted by early Christians, such as Augustine of Hippo (also known as St. Augustine), who, in their attempt to Christianize Rome, also Romanized Christianity.<sup>51</sup>

As in Roman patriarchy, the authors trace Christian patriarchy to family relationships. Although Augustine deeply loved and respected his Christian mother, she apparently accepted the prevailing patriarchal norms of the time, including her own subordinate position.<sup>52</sup> Augustine “absorbed the inferior position of women from her.”<sup>53</sup> He also adopted her acceptance of the laws that constrained intimate relationships, as evidenced by his obedience to her instructions that he desert his beloved mistress, with whom he had a child, because she was not of the appropriate social class for him to marry.<sup>54</sup> Augustine wrote in his *Confessions* that he was heartbroken by this separation from the mother of his child, but accepted this trauma as part of his duty as a “good son” in a patriarchal society.<sup>55</sup> The authors argue that Augustine responded to his loss by devaluing what he had lost, writing in *Confessions* that Eve’s inferiority was the cause of the fall of Man from the Garden of Eden and that he could not imagine a “companionate relationship based on intellectual equality” with a woman.<sup>56</sup>

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<sup>49</sup> See *id.* at 75. Although Augustus was deeply absorbed by the *Aeneid*, as were many Romans, the extent to which Augustus recognized this as the psychological price of his patriarchal heroism is unclear. The authors speculate that Augustus may have seen this narrative honesty as “advanc[ing] the overall power” of the story by “making clear the kinds of burdens and sacrifices embraced by Augustan Roman heroes.” *Id.* at 80. Alternately, Augustus may not have been personally touched by the depiction of the costs of patriarchy because, unlike Aeneas, he was “not a military man of any stature” and he had a close relationship with a wife whom he deeply respected; thus, he had not been asked to pay the same price for the sake of patriarchy that many others had. See *id.*

<sup>50</sup> See *id.* at 50–51. This was not the only unforeseen consequence of Augustus’ plan; at the same time, “the power of Roman elite women, if anything, increased.” See *id.*

<sup>51</sup> *Id.* at 112 (arguing that Augustine’s creation of an authoritarian priestly hierarchy for Catholicism mirrored the Roman political system, in which “both political and religious authority were concentrated in the emperor”); *id.* at 114 (noting that Christian missionaries such as Augustine had a “powerful incentive . . . to distinguish themselves from the Jews . . . and indeed to absorb into Christianity Roman anti-Semitism, claiming themselves thus to be more Roman than Jewish”).

<sup>52</sup> See *id.* at 106–07. The authors note that Augustine’s mother used submission and acceptance of patriarchal norms as a survival tool to cope with her husband’s violent disposition. *Id.*

<sup>53</sup> See *id.* at 108.

<sup>54</sup> See *id.* at 106, 111.

<sup>55</sup> See *id.* at 111.

<sup>56</sup> *Id.* at 105–06.

Because he associated them with inequality and with loss, Augustine also came to denigrate sexual relationships—even between spouses—as shameful and degrading.<sup>57</sup> Augustine’s association of sex with shame led him to dehumanize sexualized women such as his own lover, making it impossible for him to have respectful sexual relationships.<sup>58</sup> To cope with this relational loss, Augustine turned to idealization, both of the abstract relationship between man and God, and of selfless, apparently asexual women such as the Virgin Mary and his mother.<sup>59</sup> Although idealization of desexualized mothers may seem to be a positive portrayal of women, the authors argue that such unrealistic standards and enforced dichotomy between idealized and demonized women serve to reinforce patriarchy, not challenge it.<sup>60</sup> The consequence was a form of “motivated stupidity,” a commitment to orthodoxy over experience and independent ethical voice.<sup>61</sup>

According to Gilligan and Richards, such denigration of sexuality serves the dual function of dehumanizing both women and groups of people who are perceived as sexualized.<sup>62</sup> In Augustine’s time, Jews were such a group.<sup>63</sup> In order to make Christianity more appealing and less Jewish-sounding to anti-Semitic Romans, Augustine contrasted Christian celibate manhood with Jewish “carnality.”<sup>64</sup> Just as Octavian capitalized on Antony’s relatively egalitarian relationship with Cleopatra in order to portray him as un-Roman and unmanly, Augustine focused on Jewish society’s relatively positive attitudes toward pleasure as justification for their “moral slavery” to Christians.<sup>65</sup> Thus, much like Augustus’ *Lex Julia*, Augustine’s theological rejection of sexuality served to subordinate both women and other disfavored groups.

### C. Patriarchy in the Modern Era

Moving forward toward the modern era, Gilligan and Richards tie Augustan and Augustinian patriarchal sentiment to a number of totalitarian and

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<sup>57</sup> See *id.* at 104, 111. The authors note that shame, which arises out of a “wound to one’s pride or self-esteem,” must be distinguished from the embarrassment “experienced when a matter is made public that properly is regarded as private.” *Id.* at 105.

<sup>58</sup> See *id.* at 104 (discussing Augustine’s belief that Eve’s feminine “inferiority” led to the fall of Adam and Eve and, consequently, to sexual lust); *id.* at 106 (“One of the reasons [Augustine] gives for coming to think of sexuality as only for reproduction is that he can imagine a companionate relationship based on intellectual equality only with a man.”). Augustine also opposed nonprocreative sex, which would have included any sexual relationship between men. See *id.* at 106.

<sup>59</sup> See *id.* at 113.

<sup>60</sup> *Id.*

<sup>61</sup> See *id.* at 118. The authors argue that Augustine’s misogyny was not the natural result of his religious beliefs—the Gospels, especially those of Matthew, Mark, and Luke, portray Jesus as relatively positive toward women. See *id.* at 122–29.

<sup>62</sup> See *id.* at 137–38.

<sup>63</sup> See *id.*

<sup>64</sup> See *id.* at 121, 133.

<sup>65</sup> See *id.* at 133.

discriminatory movements, including Catholic suppression of Protestantism,<sup>66</sup> American slavery and institutional racism,<sup>67</sup> the misogyny embodied in Freud's theories of psychology,<sup>68</sup> Nazism and fascism,<sup>69</sup> and, finally, both religious (such as Christian, Muslim, and Jewish) and secular forms of fundamentalism (such as constitutional originalism).<sup>70</sup> Each of these phenomena, they argue, was or is perpetuated through restrictions on loving sexual connections.

For example, the authors characterize Freud's misogynist psychological theories as responses to the patriarchy and anti-Semitism of mainstream German society at the end of the nineteenth century. At that time, increased liberalism and interaction between Jews and Christians in German society led Freud and other Jews to see cultural assimilation into liberal German culture as a solution to German anti-Semitism.<sup>71</sup> Freud embraced mainstream patriarchal attitudes toward manhood, rejecting the pacifist attitude held by his father.<sup>72</sup> When an anti-Semitic German knocked Freud's father's hat into a gutter and insulted him, Freud's father responded by picking up his hat and walking away;<sup>73</sup> Freud, on the other hand, became consumed by

<sup>66</sup> See *id.* at 137–39.

<sup>67</sup> See *id.* at 143–44 (discussing the importance of the abolitionist movement's rejection of the "misogynist interpretation of the Adam and Eve narrative" and of the idealization of white women; the authors had previously traced both of these patriarchal tropes back to Augustine, see *supra* notes 57–61 and accompanying text); *id.* at 238–40 (linking racism to anti-Semitism, which, as noted *supra* text accompanying notes 63–65, the authors trace back to Augustine).

<sup>68</sup> See *id.* at 183, 185–90 (arguing that Freud's theories were inspired by his understanding of *Metamorphoses*, the *Aeneid*, and by his identification with Roman culture); *id.* at 183–84 ("In both Augustine and Freud, [disruption of relationships with women] leads to loss and its consequences, idealization and denigration, manifest in their subsequent views on women."); *id.* at 185 ("We see once again how patriarchy has distorted psychoanalysis in the same way that through Augustine it distorted Christianity.")

<sup>69</sup> See, e.g., *id.* at 134–36 (arguing that anti-Semitic sentiment in Nazi Germany "drew its appeal from the highly patriarchal form of European anti-Semitism inherited from Augustine" and that ancient Roman patriarchal psychology was "very much in play" in the rise of Nazism and Italian fascism); *id.* at 234 (arguing that Italian fascism "would not have been psychologically possible" if Italian culture at the time had not been incredibly patriarchal and emphasizing the effect that Augustinian ideas continued to exert on Italian culture through their popularity within the Catholic Church).

<sup>70</sup> See *id.* at 261–63 (comparing the political dynamic at play in the resurgence of religious fundamentalism in the United States to that used by Augustus in rationalizing the end of the Roman Republic, and arguing that "[o]ur contemporary experience with the revival of [constitutional] originalism is not dissimilar").

<sup>71</sup> See *id.* at 180.

<sup>72</sup> See *id.* at 175. Elsewhere in the book, we see members of other oppressed groups similarly adopting patriarchal norms in order to gain status. For example, Roman women frequently supported patriarchal institutions in order to advance the status of men with whom they were associated, and pro-slavery women supported the oppression of African Americans in order to perpetuate the idea that God had placed white women on a "high pedestal." See *id.* at 30, 143.

<sup>73</sup> See *id.* at 174–75.

revenge fantasies in which he compared himself to Hannibal avenging Carthage against Rome.<sup>74</sup>

Freud was acutely aware of the difficulties he would face in establishing himself professionally as a Jewish doctor.<sup>75</sup> When his female patients disclosed to him that they had been molested by their (socially respectable) fathers, Freud realized that to accept their stories as true would require him to stand in opposition to the patriarchy in mainstream German society.<sup>76</sup> Reluctant to fight the war for professional credibility on two fronts—as a Jewish man and as a challenger to the patriarchy—Freud denied the truth of the stories of his female patients and explained them through patriarchally-influenced theories of his own.<sup>77</sup> Because patriarchal understandings of women contradicted what he had observed, he abandoned his previous observational research style in which he had learned from his patients, and instead adopted the patriarchal status of the “conquistador of the unconscious,” overriding the voices of others.<sup>78</sup> Thus, he arrived at his most famous theory, the Oedipus Complex, through analyzing his own dreams and then assuming his analysis to be universal.<sup>79</sup>

Freud’s endorsement of sexism did not, however, successfully challenge anti-Semitism or gain him credibility. As the authors argue, the common patriarchal root of both anti-Semitism and sexism made it impossible for Freud and other Jews to successfully challenge one while accepting the other. Instead, Freud’s injection of patriarchy into his theory of psychoanalysis “distorted” the theory and left it vulnerable to harsh criticism.<sup>80</sup> Nor, according to the authors, did attempts at assimilation generally reduce the prevalence of anti-Semitic views. Mainstream German society responded to increased similarity between Jewish and non-Jewish Germans through exaggerating those small differences that remained.<sup>81</sup>

### III. RESISTANCE

Throughout their analysis of patriarchy, Gilligan and Richards also discuss historical and literary examples of resistance against patriarchy, as well

<sup>74</sup> See *id.* at 175.

<sup>75</sup> See *id.* at 178; see also *id.* at 173–74 (discussing the resurgence of anti-Semitism in Austria-Hungary during Freud’s lifetime and his marked career difficulties, which forced him to give up on his dream of becoming a research scientist and his comparatively long wait to be given a professorship at the medical faculty).

<sup>76</sup> See *id.* at 172.

<sup>77</sup> See *id.* at 171–73.

<sup>78</sup> See *id.* at 168.

<sup>79</sup> See *id.* at 171–72. In reality, the authors argue, Oedipal-type emotions (such as mother-centeredness and hostility towards the father as a young child, followed by rejection of the mother and identification with the father) are seen primarily in emotionally distant families in which children must compete for their parents’ affection, not in families in which the parents are in a “happy, passionate relationship.” *Id.* at 185.

<sup>80</sup> See *id.* at 184–85.

<sup>81</sup> See *id.* at 180.

as contemporary studies on child and adolescent development. The authors observe that individuals are more likely to be able to resist the demands of patriarchy if they are able to maintain loving, egalitarian, preferably sexual, relationships, which “save” both men and women from the constraints patriarchy places on their ability to exercise independent moral judgment.<sup>82</sup> By identifying with these relationships more strongly than with patriarchal norms, individuals are able to maintain their own ethical voice and sense of empathy toward others. As a result, the authors argue that relationships, not ideology, frequently form the real motivation for resistance to totalitarianism.<sup>83</sup> The authors further argue that cultures, as well as individuals, may exercise resistance to patriarchal influences by placing cultural value on close sexual and familial relationships.

Thus, the authors oppose the celibate ideology of Augustine with the highly sexual ideology of the Roman poet Apuleius, who “plots a way out of patriarchy” through his novel, *Metamorphoses*.<sup>84</sup> The authors interpret *Metamorphoses* as a “fictionalized autobiography” that illustrates the path leading up to Apuleius’ conversion to the cult of the goddess Isis and his rejection of patriarchal norms.<sup>85</sup> As the main character in *Metamorphoses* finds salvation through Isis, who restores him to human form after he is transformed into an ass,<sup>86</sup> Apuleius himself found salvation in the sexual love of his wife, with whom he enjoyed a remarkably egalitarian relationship.<sup>87</sup>

Gilligan and Richards also support their theory that relationships enable resistance to patriarchy by analyzing child development. They note, for example, that children often show signs of increased emotional distress at the ages at which they are forced to break relationships in order to fulfill the demands of gender norms. For boys, this comes during early childhood, when they are expected to distance themselves from their parents in order not to appear feminine.<sup>88</sup> For girls, this distress arises during adolescence, when they “discover or fear that if they give voice to . . . their pleasure and their knowledge, they will endanger their connections with others and the world at large.”<sup>89</sup> The disparity in the age at which this disruption occurs

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<sup>82</sup> See, e.g., *id.* at 85–87, 100–01 (discussing the role of sexual relationships in the life of Apuleius and in his *Metamorphoses*).

<sup>83</sup> *Id.* at 136–37 (discussing how relationships inspired Dietrich Bonhoeffer and Andre Pascal Trocme to resist Nazism).

<sup>84</sup> *Id.* at 52.

<sup>85</sup> *Id.* at 85–86.

<sup>86</sup> See *id.* at 100.

<sup>87</sup> See *id.* at 85–87.

<sup>88</sup> See *id.* at 90–91.

<sup>89</sup> See *id.* at 90; see also *id.* at 194 (recasting the distress girls feel during adolescence as healthy resistance to patriarchal demands, albeit resistance that may be manifested in pathological or self-destructive ways); *id.* at 190–92 (discussing Ian Suttie’s take on psychoanalysis, which explained Freud’s Oedipal complex as the result not of castration anxiety, but rather of “patriarchal conceptions of masculinity” that require confiding relationships to be broken relatively early in life, leading to a “taboo’ on tenderness”).

explains, in the authors' view, why girls have a "greater capacity for resistance" to patriarchy's demands than do boys.<sup>90</sup>

However, here, the authors fail to adequately address potential alternate explanations. For example, they do not address the possibility that boys' decreased ability to question patriarchal demands arises from the privileged status that patriarchy accords them, which they stand to lose by questioning its terms. Nor do the authors address the possibility that these periods of distress during childhood have biological causes, such as changes in hormonal balance.

Moreover, it is not clear how to reconcile the authors' arguments about the liberating effect of relationships with the fact that some close relationships, at least superficially, strengthen patriarchy: in some of the authors' stories, for example, close relationships with patriarchal figures—such as Augustine's relationship with his patriarchal mother—seem to strengthen, or at least fail to undermine, patriarchal attitudes.<sup>91</sup> Another potential example is military societies' glorification and encouragement of close or even sexual bonds between soldiers.<sup>92</sup> Moreover, family ties may hinder resistance: Jesus, whom the authors discussed as a resister against patriarchy, opted out of a "patriarchal conception of gender" by "refus[ing] to accept the authority of his own family of origin and . . . not defin[ing] himself by his authority within a family."<sup>93</sup> By contrast, those raised by loving families that espoused patriarchal religious beliefs often say that they avoided criticizing the religion not out of fear of their families or religious authorities, but out of love for them and fear of losing their respect or affection.<sup>94</sup>

The authors also argue that "outsider" status can, in some cases, enable individuals to observe the mechanisms of patriarchy in a clearer light and may also force them to challenge it. Vergil, for example, whom modern society would label as a "gay man," was able to observe, as an outsider, the emotional costs of patriarchy on men's and women's relationships and psyches.<sup>95</sup> Similarly, Ida Wells-Barnett, an African American woman journalist during the late nineteenth century, was able to perceive that the real motivation for lynchings in the American South was not to punish rape of

<sup>90</sup> *Id.* at 91.

<sup>91</sup> See *supra* notes 52–56 and accompanying text.

<sup>92</sup> See, e.g., LOUIS CROMPTON, *HOMOSEXUALITY AND CIVILIZATION* 69–74 (2006) (discussing Theban encouragement of homosexual relationships between soldiers, which it perceived as contributing to military morale); JOSHUA S. GOLDSTEIN, *WAR AND GENDER* 194–95 (2003) (discussing the American military tradition of encouraging bonding between male soldiers).

<sup>93</sup> GILLIGAN & RICHARDS, *supra* note 1, at 123.

<sup>94</sup> See SOLOMON SCHIMMEL, *THE TENACITY OF UNREASONABLE BELIEFS: FUNDAMENTALISM AND THE FEAR OF TRUTH* 56–58 (2008).

<sup>95</sup> See GILLIGAN & RICHARDS, *supra* note 1, at 75–76. Even in the context of Rome's tolerance for sexual activity between men, Vergil's exclusive interest in men placed him somewhat in the position of an outsider with respect to Roman manhood. The authors also attribute his perceptiveness to his Epicurean philosophy, which placed a high value on observing and understanding natural and human phenomena. *Id.*

white women, but was instead “a[n] excuse to get rid of negroes who were acquiring wealth and property.”<sup>96</sup>

The authors acknowledge, however, that “outsider” status may instead make resistance more difficult, as in the case of Freud. The authors argue that Freud, as a Jewish man seeking the approval of the mainstream professional world in Germany, aligned himself with mainstream society’s patriarchal attitudes because he believed cultural assimilation was the best way to overcome anti-Semitism.<sup>97</sup>

In addition to resistance by individuals, the authors discuss resistance by cultures that are subordinated by patriarchy, such as the Jewish community. The authors argue that Judaism’s positive attitudes toward sexual pleasure in marriage and emphasis on family life contrast markedly with Augustinian attitudes toward sexuality. For example, husbands are encouraged to give their wives sexual pleasure on the Sabbath, and Jewish rabbis marry and have family lives.<sup>98</sup> According to the authors, such positivity toward intimacy contributed to the European Jewish community’s ability to resist centuries of oppression, marginalization, and violence at the hands of the Catholic Church.<sup>99</sup>

Although the authors do not suggest that male dominance had no place in ancient Jewish life,<sup>100</sup> the differences they identify between ancient Jewish society and ancient Christian society are nevertheless somewhat exaggerated. For example, the authors contrast Augustine’s rejection of sexual pleasure with the relatively laxer “ethical” constraints that Judaism places on sexuality.<sup>101</sup> However, many laws on sexuality found in the Torah appear to be inspired more by male dominance or sexual purity than by ethics.<sup>102</sup> For

<sup>96</sup> See *id.* at 229 (quoting *CRUSADE FOR JUSTICE: THE AUTOBIOGRAPHY OF IDA B. WELLS* 64 (Alfred M. Duster ed., 1970)). The authors note that Wells’ outsider status resulted from her race and gender, which made her a “bad woman” in the eyes of racists and sexists, “all the worse for speaking about sexuality.” *Id.* at 232.

<sup>97</sup> See, e.g., *id.* at 179–80 (arguing that “[p]atriarchy bears most heavily on the voices of men who would reasonably protest its terms” and that Freud was “exposed . . . to these burdens” by his early connections to women, views on sexuality, and identity as a Jewish man).

<sup>98</sup> See *id.* at 131.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 132–33.

<sup>101</sup> *Id.* at 133 (“The Pauline attack on the role of law in Judaism, which subjects sexual love to ethical constraints, arises from what Jews found so unreasonable, the rejection of sexuality because it blocked access to God.”).

<sup>102</sup> See, e.g., *Leviticus* 20:10 (The New Oxford Annotated Bible with the Apocrypha: Revised Standard Version) (requiring that adultery be punished by death); *Deuteronomy* 22:20–21 (The New Oxford Annotated Bible with the Apocrypha: Revised Standard Version) (If “the tokens of virginity were not found in the [newly married] young woman, then they shall bring out the young woman to the door of her father’s house, and the men of the city shall stone her to death with stones, because she has wrought folly in Israel by playing the harlot in her father’s house; so you shall purge the evil from the midst of you.”); *Deuteronomy* 23:2 (The New Oxford Annotated Bible with the Apocrypha: Revised Standard Version) (prohibiting bastard children from entering the Assembly of the Lord); *Deuteronomy* 21:10–14 (The New Oxford Annotated Bible with the Apocrypha: Revised Standard Version) (permitting marriage to women taken captive during war).

example, *Leviticus*, much like Augustus' *Lex Julia*, prescribes death as punishment for adultery.<sup>103</sup> No mainstream form of Judaism, of course, adheres to this view, and adherents to the more liberal Jewish movements—including Conservative, Reform, and Reconstructionist Judaism—do in fact regard the heart of Jewish law as ethical in nature, which creates an opportunity to reexamine and update the laws of the Torah to adjust to modern life.<sup>104</sup> However, other Jewish movements reject the notion that Jewish laws are essentially subject to “updating” in light of new social contexts and instead teach that the laws are to be followed for their own sake, not for any discernible ends they may further.<sup>105</sup> Despite these features of ancient Jewish society, it can be readily acknowledged that official Jewish attitudes toward sexuality were, even then, more positive than official Catholic attitudes, as exemplified by Augustine and the successors of the *Lex Julia*.<sup>106</sup> Moreover, for the purposes of Catholic and Roman persecution and propaganda,

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<sup>103</sup> *Leviticus* 20:10 (The New Oxford Annotated Bible with the Apocrypha: Revised Standard Version). This commandment was issued directly from God to Moses. *Id.* at 20:1–10.

<sup>104</sup> See R.D. GOLD, *BONDAGE OF THE MIND: HOW OLD TESTAMENT FUNDAMENTALISM SHACKLES THE MIND AND ENSLAVES THE SPIRIT* 187–207 (2008) (discussing emergence and ideas of Reform and Reconstructionist Judaism); see also, e.g., GILLIGAN & RICHARDS, *supra* note 1, at 133 (discussing modern developments in Jewish thought on gender and homosexuality).

<sup>105</sup> The Chabad-Lubavitch movement, for example, takes this approach. See, e.g., Tsvi Freeman, *Why Do We Keep Kosher?*, [http://www.chabad.org/library/article\\_cdo/aid/82894/jewish/Why-Do-We-Keep-Kosher.htm](http://www.chabad.org/library/article_cdo/aid/82894/jewish/Why-Do-We-Keep-Kosher.htm) (last visited Apr. 19, 2009) (rejecting the theory that kosher laws arise from health or ethical concerns); Tzvi Freeman, *Women in the Synagogue: An Answer to the Controversy*, [http://www.chabad.org/theJewishWoman/article\\_cdo/aid/97367/jewish/Women-in-the-Synagogue.htm](http://www.chabad.org/theJewishWoman/article_cdo/aid/97367/jewish/Women-in-the-Synagogue.htm) (last visited Apr. 19, 2009) (arguing that the requirement that women in synagogue be kept out of sight and hearing of men is “timeless” and not subject to revision, but suggesting that such segregation is not inconsistent with respect for women); Bronya Schaffer, *Do Homosexuals Fit into the Jewish Community?*, [http://www.chabad.org/library/article\\_cdo/aid/663504/jewish/Do-Homosexuals-Fit-into-the-Jewish-Community.htm](http://www.chabad.org/library/article_cdo/aid/663504/jewish/Do-Homosexuals-Fit-into-the-Jewish-Community.htm) (last visited Apr. 19, 2009) (declaring the Torah’s prohibition on homosexuality to be “absolute” and not subject to alteration). Similarly, the authors elsewhere argue that Jews during antiquity and the middle ages, unlike Catholics, had limited incentive to avoid “carnal” pleasures because they did not believe in an afterlife. See, e.g., GILLIGAN & RICHARDS, *supra* note 1, at 131. Some modern liberal Jewish movements, such as the Reform movement, have questioned or rejected belief in an afterlife. See GOLD, *supra* note 104, at 189, 194. However, many classical and medieval Jewish thinkers did in fact believe in an afterlife, although their emphasis on the afterlife may still have been less pronounced than that of the Catholic Church, and their version of the afterlife had a different relationship to individual conduct than that envisioned by Catholicism. See, e.g., LEVI BEN GERSHON (GERSONIDES), *THE WARS OF THE LORD, BOOK ONE: IMMORTALITY OF THE SOUL* 223–25 (Seymour Feldman trans., 1984) (written between 1317–1329 C.E.) (arguing that each individual possesses a separate, immaterial “acquired intellect” that survives death, the quality of which is determined by what the individual learns during life). I am grateful to Jonathan Gingerich for providing me with this source. The Talmud additionally refers to a world to come in which the dead will be resurrected. See YERUSHALMI TALMUD, *Sanhedrin 90a* (Jacob Neusner trans., 1984).

<sup>106</sup> During the fourth century B.C., adulterers were punished “by being sewn up in a leather sack with a dog, a cock, a viper, and a monkey, and cast into a river or the sea,” a punishment otherwise reserved for parricide. GILLIGAN & RICHARDS, *supra* note 1, at 42.

whether Jews actually valued equality and sexual expression is not as relevant as whether Catholics or Romans believed that they did.<sup>107</sup>

Finally, the authors argue that democratic legal institutions may facilitate resistance by fostering egalitarian ideals and creating opportunities to voice dissent. Such “core” democratic institutions, such as equality principles and freedom of speech,<sup>108</sup> are essential stopgaps against patriarchal totalitarianism. Equality and freedom of speech are, to some extent, inseparable, as egalitarianism requires that all members of society have a voice, and not just those in power.<sup>109</sup> Suppression of dissenting voices—by labeling such voices insane or treasonous—is essential to the perpetuation of rigid, undemocratic hierarchies.<sup>110</sup> Moreover, in the absence of freedom of speech, nonviolent resistance is impossible and violence, including terrorism, is consequently privileged as the only avenue of resistance.<sup>111</sup>

Freedom of speech also facilitates artistic expression, which has historically served as a safe outlet for criticism of social structures and norms.<sup>112</sup> The authors argue that Athenian democracy, for example, survived despite high levels of male dominance because Athens allowed and encouraged free, critical speech in art and public discourse.<sup>113</sup>

#### IV. CONTEMPORARY ISSUES

Gilligan and Richards’s discussions of contemporary political issues from the lens of patriarchy and resistance, found in Part 3 and some subchapters in Part 2 of *The Deepening Darkness*, offer interesting insights into the continuing role that patriarchy plays in the political sphere. Unfortunately, the brevity of the section on contemporary issues—about twenty

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<sup>107</sup> For comparison, see *id.* at 228–29, discussing white racist sexualization of African Americans. Here, the authors argue that this sexualization was not the result of any actual difference in the sexual behavior or attitudes of African Americans. *Id.*

<sup>108</sup> When these two principles are in conflict, as in the case of hate speech, Gilligan and Richards appear to prioritize freedom of speech. See *id.* at 255.

<sup>109</sup> See *id.* at 254–55.

<sup>110</sup> See *id.* at 255 (“What made totalitarianism so distinctive in the modern period was its techniques of terror and a violence directed at quashing democratic voice.”); see also *id.* at 32 (noting that insults about the “terms of the Roman honor code” were met with violence); *id.* at 102–03 (discussing Augustine’s persecution of “heretics”); *cf. id.* at 129–31 (arguing that the anti-Semitism and ideological intolerance seen in the medieval Catholic Church were a response to growing internal doubts within the church: “Precisely when the dominant religious tradition gave rise to the most reasonable internal doubts, these doubts were displaced from reasonable discussion and debate into blatant political irrationalism based on chimeria [sic] against one of the more conspicuous, vulnerable, and innocent groups of dissenters.”).

<sup>111</sup> See *id.* at 256.

<sup>112</sup> See *id.* at 32 (explaining that the right to free speech enjoyed by ancient Athenians “encouraged forms of philosophy and theater that exposed [Athenian society’s] mistakes and the tragic costs of its policies”); *id.* at 198–99 (explaining that artists offer a “deeper understanding of the tensions between democracy and patriarchy”).

<sup>113</sup> *Id.* at 32.

pages<sup>114</sup>—precludes a thorough discussion of every contemporary issue that would benefit from analysis through the lens of patriarchy. Compared to the authors' in-depth, nuanced approach to historical movements, their analysis of contemporary issues is relatively shallow. However, these brief discussions of the impact of patriarchy on contemporary issues invite readers to build on the authors' insights through further analysis, as I attempt to do below regarding the role of patriarchy in Israeli politics.

Because their theory of patriarchy connects gender inequality with political inequalities, the authors are able to connect concerns frequently dismissed as "feminist issues," such as gender inequality in India, with broader, "gender-neutral" political issues, such as colonial power and cultural domination.<sup>115</sup> Similarly, they analyze ostensibly "gender-neutral" phenomena, such as the "War on Terror" and constitutional originalism, through a gender theory lens.<sup>116</sup> The result is an approach that connects seemingly independent cultural trends and resistance movements.

For example, the authors tie contemporary Hindu violence against Muslims in India to a patriarchal gender and caste system that was reinforced by British colonists, who saw themselves as following in the footsteps of the Roman Empire. Taboos against intermarriage among castes, much like American taboos against racial intermarriage and Roman taboos against marriage among different classes, constrain human relationships in order to ensure that they "advance patriarchal ends."<sup>117</sup> Other norms surrounding marriage and gender, such as discouragement of higher education for women and translocation of brides away from their families and into their husbands' families, similarly function to disrupt relationships and stifle individual moral development.<sup>118</sup> Although the authors analyze Indian patriarchy in part through cultural texts that precede British colonization, such as the *Ramayana* and *Mahabharata*,<sup>119</sup> they stress that British colonists both approved of and strengthened Indian patriarchal hierarchy, in the hope that they could superimpose themselves at the top of it.<sup>120</sup> The authors argue that this same sense of patriarchal manhood in Indian men, fostered by the British to ensure their own dominance, later led to violence against outgroups—such as Muslims and couples that violated Indian cultural "Love Laws"<sup>121</sup>—who are seen as a threat to that manhood.<sup>122</sup>

The authors also criticize the influence of religious fundamentalism on family norms in the United States. The authors argue that such fundamental-

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<sup>114</sup> Counting Chapter 9.5, which discusses constitutional fundamentalism, the authors' discussion of contemporary issues begins at page 243 and ends at page 263. *See id.*

<sup>115</sup> *Id.* at 249–52.

<sup>116</sup> *Id.* at 253–56.

<sup>117</sup> *See id.* at 250.

<sup>118</sup> *See id.*

<sup>119</sup> *Id.* at 252.

<sup>120</sup> *Id.* at 251.

<sup>121</sup> For a definition of this term, see *supra* note 11 and accompanying text.

<sup>122</sup> *See id.* at 250.

ism is, at least in part, a reaction to the Civil Rights Movement and the activism of the 1960s, which, in their view, disrupted patriarchal hierarchies and the “Love Laws” that reinforced them.<sup>123</sup> Conservative portrayals of the 1960s have traditionally downplayed the democratic achievements of that era, recasting it as merely a “time of sex, drugs, and rock ‘n’ roll.”<sup>124</sup> Thus, religious fundamentalist organizations in the United States tend to focus on restoring or defending the traditional family norms that kept patriarchy in place, such as restrictions on reproductive autonomy and same-sex marriage.<sup>125</sup>

The authors argue that, like the resurgence of religious fundamentalism, the conservative movement toward constitutional originalism also signals a move toward “source-based fundamentalism” and away from the progressive constitutional approach seen in the latter half of the twentieth century.<sup>126</sup> Like Protestant fundamentalism, constitutional originalism appeals to the “certainty of a specific understanding of authority rooted in the past, a certainty that is to guide thought and conduct today irrespective of reasonable contemporary argument and experience to the contrary.”<sup>127</sup> Constitutional originalism not only rejects the theory that constitutional norms may evolve over time, but also adopts a specific interpretation of constitutional norms as they existed at the time of the Constitution’s adoption and rejects other interpretations.<sup>128</sup> Moreover, much like many religious fundamentalist movements, the constitutional originalist movement focuses heavily on issues related to sexuality and reproduction.<sup>129</sup>

The authors challenge constitutional originalism in two ways. First, they argue that the drafters of the Constitution themselves—particularly James Madison<sup>130</sup>—would not have embraced the patriarchal authority that constitutional originalism grants to them when it focuses on their beliefs to the exclusion of contemporary ones.<sup>131</sup> The authors argue that Madison’s

<sup>123</sup> *See id.* at 257–58, 261.

<sup>124</sup> *Id.* at 258.

<sup>125</sup> *Id.* at 261.

<sup>126</sup> *Id.* at 243.

<sup>127</sup> *Id.*

<sup>128</sup> *See id.* at 244.

<sup>129</sup> *See id.* at 261 (discussing Christian fundamentalist responses to judicial recognition of abortion and same-sex marriage rights); *see also id.* at 245–46 (arguing that the constitutional originalist movement “specifically targeted” constitutional developments concerning sexuality and gender, such as abortion and gay marriage).

<sup>130</sup> Ironically, Madison is the mascot of the Federalist Society, a legal society that has championed the theory of constitutional originalism. *See generally, e.g.,* THE FEDERALIST SOCIETY, THE GREAT DEBATE: INTERPRETING OUR WRITTEN CONSTITUTION (1986), available at <http://www.fed-soc.org/resources/id.47/default.asp> (defending constitutional originalism); The Federalist Society, <http://www.fed-soc.org> (last visited Apr. 19, 2009) (featuring Madison logo).

<sup>131</sup> GILLIGAN & RICHARDS, *supra* note 1, at 244–45 (discussing Madison’s endorsement of the Lockean argument that “the normative basis of political legitimacy [is] not history but respect for the inalienable human rights that protected the spheres of reasonable self-government of free people,” and arguing that “the better way to square the authority of a written constitution with this view of the Founders’ authority is to allow later

discomfort was justified, as the theory of evolving constitutional standards has led to significant progress toward broadening the scope of human rights, including those of women and sexual minorities.<sup>132</sup> Indeed, they argue that it is exactly this progress that has led to patriarchal backlash in the form of constitutional fundamentalism.<sup>133</sup>

However, the authors elsewhere note moments in history in which equality advocates have themselves appealed to the intent behind the Constitution, or to ideals of judicial restraint. For example, abolitionists argued that *Dred Scott v. Sandford*<sup>134</sup> contradicted “the fundamental American constitutional value of universal human rights,”<sup>135</sup> while Justice John Marshall Harlan, in his dissenting opinion in *Plessy v. Ferguson*,<sup>136</sup> accused the Court of uncritically adopting views on racial differences that were controversial even at the time.<sup>137</sup>

Second, the authors note that the originalist interpretation of the Constitution is not as objective or timeless as it claims to be. Instead, it selectively targets new constitutional developments in the realm of privacy, such as *Roe v. Wade*<sup>138</sup> and *Lawrence v. Texas*,<sup>139</sup> while embracing similarly “new” constitutional developments—such as the prohibition on racial segregation—that also might not have been predicted by the drafters of the Reconstruction Amendments.<sup>140</sup> Moreover, the authors note that decisions now seen as deeply flawed, such as *Plessy* and *Dred Scott*, claimed at the time to rest on objective interpretations of either the Constitution (in the case of *Dred Scott*) or nature (in the case of *Plessy*).<sup>141</sup>

Thus, the authors not only reject conservative critiques that progressive constitutionalism is an “undemocratic” assignment of legislative power to unelected judges, but also argue that it is constitutional originalism that is truly undemocratic.<sup>142</sup> The root of this disagreement may be the distinction the authors draw between democracy and majority rule: unlike simple majoritarianism, democracy is premised on egalitarianism and individual rights, which provide a check against uncontrolled exercise of majority power.<sup>143</sup>

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interpretive generations, including the Supreme Court, reasonably to recontextualize the abstract connotations of constitutional guarantees of human rights in contemporary circumstances”).

<sup>132</sup> *Id.* at 245–46.

<sup>133</sup> *Id.* at 245–46, 262.

<sup>134</sup> 60 U.S. 393 (1857).

<sup>135</sup> See GILLIGAN & RICHARDS, *supra* note 1, at 227.

<sup>136</sup> 163 U.S. 537 (1896).

<sup>137</sup> See GILLIGAN & RICHARDS, *supra* note 1, at 228.

<sup>138</sup> 410 U.S. 113 (1973).

<sup>139</sup> 539 U.S. 558 (2003).

<sup>140</sup> GILLIGAN & RICHARDS, *supra* note 1, at 262.

<sup>141</sup> *Id.* at 228 (discussing *Plessy*); *id.* at 262 (discussing *Dred Scott*).

<sup>142</sup> *Id.* at 262–63 (characterizing politicians who appoint originalist judges as “indulg[ing] sexism and homophobia” among their constituencies, at the expense of broader democratic principles).

<sup>143</sup> *Id.*

Turning to international relationships, the authors criticize the “War on Terror” in the United States as an international manifestation of domestic patriarchal attitudes. The authors argue that the United States’ bellicosity toward Muslim nations in the Middle East goes beyond a mere interest in self-defense and is instead at least partially rooted in America’s sense of “humiliated manhood” in the face of terrorist attacks.<sup>144</sup> They urge the United States to respond to terrorism not through force (or, perhaps, not only through force), but through encouraging and responding to nonviolent forms of dissent.<sup>145</sup> Otherwise, “by default we privilege those who turn to violent means.”<sup>146</sup>

The authors also argue that terrorism itself is enabled by the patriarchal social norms of many of the United States’ nondemocratic allies, which have contributed to the formation of fundamentalist, terrorist networks “fueled by a sense of manhood humiliated by the United States [through its support of Israel].”<sup>147</sup> As the authors note, many members of these networks are themselves from those same patriarchal “ally” countries.<sup>148</sup> However, the authors emphasize that it is patriarchy and religious fundamentalism, not Islam itself, which have led to terrorism.<sup>149</sup>

Although *The Deepening Darkness* addresses the crucial role patriarchy plays in the militarism of both the United States and various Middle Eastern nations, it is relatively silent on the role of patriarchy in Israeli politics, even when Israel is discussed. Rather, the authors almost exclusively discuss the conflict in terms of patriarchal attitudes among Israel’s enemies.<sup>150</sup> Although they take pains to note that they “certainly do not defend everything Israel has done,”<sup>151</sup> and acknowledge that fundamentalist forms of Judaism exist,<sup>152</sup> the absence of discussion about Jewish fundamentalism and its role in the conflict is strange in light of the authors’ extensive discussions of Judaism and anti-Semitism throughout history and their deep concern about the rise of Christian fundamentalism in the United States, which they perceive as a threat to American democracy.<sup>153</sup> However, a closer look at religious fundamentalist and other patriarchally-influenced movements within Israel reveals that Gilligan and Richards’s theory of patriarchy can be productively applied

<sup>144</sup> *Id.* at 255–56.

<sup>145</sup> *Id.* at 256.

<sup>146</sup> *Id.* (quoting ARUNDHATI ROY, WAR TALK 13 (2003)).

<sup>147</sup> *Id.* at 252.

<sup>148</sup> *Id.* at 253.

<sup>149</sup> *Id.*

<sup>150</sup> *See, e.g., id.* at 257 (characterizing the conflict between Israel and its neighbors as arising from the affront that highly patriarchal Muslim societies and governments take to Israel’s existence on what they perceive as their land, and to its permissive, Western-influenced style of government, “which stands as a rebuke to their own lack of democracy and respect for civil liberties”).

<sup>151</sup> *Id.* at 256.

<sup>152</sup> *Id.* at 249.

<sup>153</sup> *See id.* at 263 (arguing that the “stakes could not be higher” in the struggle over Supreme Court appointments, which the authors link to religious fundamentalism).

to these movements in much the same way that the authors apply it to American religious fundamentalism and the War on Terror.

In the context of this Review, I will use the term “fundamentalist” narrowly to refer to movements whose members “regard [their] tenets as uncompromisable and direct transcendental imperatives to political action oriented toward the rapid and comprehensive reconstruction of society.”<sup>154</sup> Thus, although traditional Orthodox Judaism may be seen as “fundamentalist” in its acceptance of the literal truth and timeless application of the Torah and its laws,<sup>155</sup> here I will use the term “fundamentalist” only to refer to those who view these laws as “uncompromising and direct . . . imperatives to political action.”<sup>156</sup> Moreover, some, but not all, Jews identifying as Orthodox endorse patriarchal interpretations of Jewish law, or *halakha*; thus, Orthodox Jews may not qualify as “fundamentalist” even when one considers enforcement of gender hierarchies within families to be “political” action, as Gilligan and Richards do.<sup>157</sup>

The relationship between highly religious Jewish communities and Israeli politics is complex. The Orthodox Jewish community historically opposed formation of a Jewish state in what was then Palestine, viewing this move as a hubristic attempt to “push the end” or bring about the coming of the Jewish messiah.<sup>158</sup> After the Holocaust led to massive migrations of Jewish refugees, Orthodox rabbis endorsed the formation of Israel as a Jewish state, but only after a political compromise that placed authority for all marriages, divorces, and adoptions in Israel under the authority of religious councils.<sup>159</sup> The Israeli government recognizes a separate council for each major religion within Israel, including Judaism, Islam, Catholicism, and Or-

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<sup>154</sup> See, e.g., IAN S. LUSTICK, *FOR THE LAND AND THE LORD: JEWISH FUNDAMENTALISM IN ISRAEL* 6 (1988).

<sup>155</sup> See GOLD, *supra* note 104, at xiii. However, some members of the Orthodox community may in fact not hold fundamentalist beliefs. See, e.g., SCHIMMEL, *supra* note 94, at 12 (discussing the author’s choice to remain a member of an Orthodox synagogue and follow Orthodox traditions even after rejecting Orthodox Judaism’s foundational beliefs).

<sup>156</sup> Cf. LUSTICK, *supra* note 154, at 6–7 (explaining that “[a]lthough sometimes considered fundamentalist, ultra-Orthodox Jews, referred to in Hebrew as the Haredim . . . do not engage actively in politics in order to achieve rapid and comprehensive change in Israeli society” and instead frequently dissociate themselves from Israeli politics). However, while Haredim have “opted out” of “macropolitical issues” in Israeli society, some do “wield substantial bargaining power on [political] issues of direct religious concern,” such as the “operating hours of theaters, the location of public swimming pools, and the sexual content of advertisements.” *Id.* at 7. Because such issues directly implicate patriarchal trends, I will consider such activists “fundamentalists” for the purposes of this discussion.

<sup>157</sup> See, e.g., Jewish Orthodox Feminist Alliance, <http://www.jofa.org/about.php/who/mission> (last visited Apr. 19, 2009) (advocating gender-egalitarian interpretations of *halakha*). Patriarchal interpretations of *halakha* are discussed *infra* notes 161–172 and accompanying text.

<sup>158</sup> LUSTICK, *supra* note 154, at 27 (quoting BEN HALPERN, *THE IDEA OF THE JEWISH STATE* 88 (1969)).

<sup>159</sup> *Id.* at 27–28.

thodox Christianity. Each council exercises control over the family law matters of its respective members; no civil marriage authority exists in Israel.<sup>160</sup>

The Jewish religious courts exercise authority over all Jewish marriages, including the marriages of secular, Reform, and Conservative Jews; however, judges in these courts are not elected by the general population of Israel, nor are the members of the Chief Rabbinate, which supervises appointments to the Jewish religious courts.<sup>161</sup> Thus, the religious court system is disproportionately dominated by rabbis that adhere to extremely strict, patriarchal interpretations of *halakha*.<sup>162</sup> Thus, marriages to non-Jews or to overly liberal Jewish converts, for example, are prohibited.<sup>163</sup> *Agunot*, or women whose former husbands have not granted them a certificate of divorce (called a *get*), are unable to remarry.<sup>164</sup> *Mamzerim*, or the offspring of a prohibited union such as between an *agunah* and her new partner, are prohibited from marrying anyone other than another *mamzer*; moreover, *mamzer* status is transmitted to their descendants.<sup>165</sup> Although Israeli Jews frequently circumvent these prohibitions by marrying or divorcing abroad or

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<sup>160</sup> Heather Lynn Capell, *After the Glass Has Shattered: A Comparative Analysis of Orthodox Jewish Divorce in the United States and Israel*, 33 TEX. INT'L L.J. 331, 333 (1998).

<sup>161</sup> Chief Rabbinate of Israel Law, 5740-1980, 34 LSI 97, 97 (1979-80) (Isr.) (granting the Council of the Chief Rabbinate the authority to approve judges serving on religious courts); *id.* at 98-101 (establishing an Electoral Assembly to select the Chief Rabbi and most other rabbis serving in the Council of the Chief Rabbinate; the Electoral Assembly is made up of 80 rabbis and 70 representatives of the public). The representatives of the public and rabbis in the Electoral Assembly are themselves not democratically selected: the majority of the rabbis are "town rabbis," who must themselves be certified by the Chief Rabbinate, and many of the "members of the public" are either the heads of town or local religious councils. *Id.* at 97, 99.

<sup>162</sup> See Basheva E. Genut, Note, *Competing Visions of the Jewish State: Promoting and Protecting Freedom of Religion in Israel*, 19 FORDHAM INT'L L.J. 2120, 2145, 2149-52 (1996). Ironically, while Jewish religious courts in Israel have been criticized for their progressive trend toward extreme applications of Jewish law, Israel's Shari'a courts have been criticized as "watering down" Islamic family law with secular norms. See generally Moussa Abou Ramadan, *The Shari'a in Israel: Islamization, Israelization and the Invented Islamic Law*, 5 UCLA J. ISLAMIC & NEAR E.L. 81 (2007).

<sup>163</sup> For example, in a recent divorce case, a rabbinical court judge questioned the conversion of the husband, who had converted to Orthodox Judaism at a young age, because he may not have lived an Orthodox lifestyle at the time of his thirteenth birthday, when his conversion would have been finalized. If the husband had not in fact lived an Orthodox lifestyle at this age, the judge reasoned, he could not be considered Jewish; thus, a writ of divorce would be unnecessary because his marriage to his Jewish wife would be automatically void. See Matthew Wagner, *Rabbinical Court Casts Doubt on Conversion of Son of Famed Jewish Theologian*, JERUSALEM POST, Jan. 20, 2009, at 6, available at <http://www.jpost.com/servlet/Satellite?cid=1232292909673&pagename=JPArticle%2FShowFull>.

<sup>164</sup> Capell, *supra* note 160, at 337. Although in some cases rabbinical courts can alleviate some of the inequalities this rule creates by ordering a husband to issue a *get*, they rarely do so. *Id.* at 342. Many feminist organizations do not believe that simply empowering religious courts to protect women's welfare would be sufficient to actually achieving gender equality in family law, and instead focus on changing the religious court system itself. *Id.* at 343.

<sup>165</sup> See *id.* at 337.

by engaging in certain kinds of private marriage ceremonies,<sup>166</sup> the legal authority given to the religious courts symbolically grants State approval of the courts' views on Jewish law, privileging these views over others that lack such approval. Indeed, this is seen by many defenders of the Israeli marriage system as its primary purpose, as it affirms the Jewish identity of the State of Israel without unduly infringing on religious freedom.<sup>167</sup>

Israel's delegation of family lawmaking authority to the Chief Rabbinate, however, embodies undemocratic, patriarchal norms. First, as noted above, because the general population of Israel does not participate in the elections for the Chief Rabbinate, the Chief Rabbinate's interpretation of *halakha* is not always responsive to prevailing cultural trends in Israel.<sup>168</sup>

Moreover, the strict interpretation of *halakha* that the religious courts endorse also includes marked restrictions on love and intimacy that go beyond the matters within its jurisdiction. For example, groups that interpret *halakha* on a similarly fundamentalist level also place a high value on feminine "modesty," which is characterized by an "inwardness" and "muteness in the outside, public realm."<sup>169</sup> The goal of such modesty is to discourage illicit sexual arousal.<sup>170</sup> Many also interpret *halakha* to prohibit any intimate

<sup>166</sup> See *id.* at 345; Genut, *supra* note 162, at 2155–56.

<sup>167</sup> See Genut, *supra* note 162, at 2173–74 (arguing that recognizing even Reform Jewish marriages and identity would "fragment" the Jewish community and undermine Israel as a nation); *id.* at 2175–76 (seeking a balance between the symbolic benefit of according primary legitimacy to Orthodox Jewish law and the liberty interests of secular Jews). Note that in both of these arguments, Genut discusses balancing Jewish identity against religious freedom, without addressing the effects that the current state of the law has on gender equality or the patriarchal order; Orthodox *halakha* is discussed as if it were merely stricter and more demanding than more liberal interpretations of Jewish law, not less egalitarian. *Id.* at 2173–75. Note also that, because the rabbinical courts are legally equal in status to the analogous Christian and Muslim religious courts, it is unclear how the authority of the rabbinical courts reinforces Israel's identity as a Jewish state any more than the authority of the other courts establishes Israel's identity as a Christian and Muslim state. See Capell, *supra* note 160, at 333.

<sup>168</sup> For example, many of the Chief Rabbinate's decisions regarding Jewish identity and divorce are widely criticized by Israel's population. See, e.g., Wagner, *supra* note 163 (criticizing a decision of the rabbinical court). Moreover, many mainstream political parties in Israel favor civil marriage. See, e.g., Mazal Muallem, Lieberman, Livni Mull 'Civil Front', HAARETZ, Feb. 17, 2009, at 1, available at <http://www.haaretz.com/hasen/spages/1064786.html> (discussing the positions of Kadima and Yisrael Beteinu, two of the three parties with the most seats in the current Knesset). However, traditionalist views of *halakha* do not contemplate that the law may change in response to evolving cultural standards. See GOLD, *supra* note 96, at 190–91 (comparing Orthodox Jewish approaches to Jewish law with modern liberal Jewish approaches); cf. GILLIGAN & RICHARDS, *supra* note 1, at 133 (discussing Jewish movements that have criticized the "sexist and homophobic features of their historical tradition"). Thus, the religious courts are unlikely to voluntarily adopt more secular, majoritarian views on Jewish law.

<sup>169</sup> See Tamar Rapoport, Yoni Garb & Anat Penso, *Religious Socialization and Female Subjectivity: Religious-Zionist Adolescent Girls in Israel*, 68 Soc. EDUC. 48, 53 (1995). The school described in this article also continues to endorse the view, criticized by Gilligan and Richards, that women should not read the Torah, although the school does so in a manner that nominally exalts the status of women. *Id.* at 49–51, 59; see also GILLIGAN & RICHARDS, *supra* note 1, at 132–33.

<sup>170</sup> Rapoport, Garb & Penso, *supra* note 169, at 54.

physical contact between opposite-sex individuals who are neither related nor married to each other.<sup>171</sup> By following highly strict interpretations of Jewish law in their opinions on marital law, the religious courts implicitly endorse these other implications of that interpretative approach. Moreover, as others have noted, the fact that Israel's marriage laws can be circumvented does not mean that they do not interfere with individual rights, such as the right to family life.<sup>172</sup>

Another context in which fundamentalist Jewish ideology affects Israeli politics is the Religious Zionist movement. Although, as noted above, mainstream Orthodox Judaism historically disfavored religiously-motivated Zionist movements, the Six-Day War, which dramatically expanded Israel's territorial reach, led to a surge in popular religious sentiment toward the modern State of Israel, or religious Zionism, among religious Israelis.<sup>173</sup> Religious Zionist movements tend to argue that Israel is divinely prohibited from giving up sovereignty over any of its territory, including those territories seized during the Six-Day War, even to avoid loss of human life.<sup>174</sup>

As a result, religious Zionists have historically opposed negotiations over a two-state solution to the Palestinian-Israeli conflict and have supported efforts to settle Israeli families on land in the West Bank and Gaza.<sup>175</sup> Those who believed peace could be achieved by compromise were seen as mistaken in their belief that the conflict "is a normal one, about borders and political rights," rather than part of a larger "metaphysical struggle."<sup>176</sup> Individual adherents to this fundamentalist approach have, in some cases, engaged in political violence, as in the assassination of Yitzhak Rabin<sup>177</sup> and the murder of over two dozen Muslims at prayer in a mosque.<sup>178</sup> Religious Zionism's characterization of Israeli sovereignty over the disputed territories as divine in origin and not subject to rational questioning, and its adherents' tendency to dehumanize and villainize both non-Jews and Jews who threaten this sovereignty, may have contributed to such violence even when its religious leaders did not endorse it.<sup>179</sup>

<sup>171</sup> See Yehuda Henkin, *Is Handshaking a Torah Violation?*, 4 HAKIRAH 115, 116 (2007).

<sup>172</sup> See generally Yuval Merin, *The Right to Family Life and Civil Marriage Under International Law and its Implementation in the State of Israel*, 28 B.C. INT'L & COMP. L. REV. 79 (2005) (arguing that Israel's marriage laws violate international conventions guaranteeing individuals the right to a family life).

<sup>173</sup> LUSTICK, *supra* note 154, at 29.

<sup>174</sup> See *id.* at 82–83.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 81.

<sup>177</sup> See Ehud Sprinzak, *Extremism and Violence in Israel: The Crisis of Messianic Politics*, 555 ANNALS AM. ACAD. POL. & SOC. SCI. 114, 125 (1998).

<sup>178</sup> See LUSTICK, *supra* note 154, at viii–ix.

<sup>179</sup> See Sprinzak, *supra* note 177, at 125 (discussing Rabin's assassin). However, as Sprinzak notes, the trauma resulting from Rabin's assassination has dramatically reduced the likelihood of further illegal violence from this group in the future. *Id.* at 125–26; see also LUSTICK, *supra* note 154, at 67 (discussing Meir Kahane's plot to destroy Muslim shrines on the Temple Mount and his suspected association with Terror Against Terror, an

The militarism seen in the religious Zionist movement does not naturally follow from a traditional Orthodox interpretation of the Torah. As discussed above, before the creation of Israel as a Jewish state, Orthodox rabbis historically condemned both militaristic and Zionist religious movements as heretical, even seeing them as a threat to Jewish survival.<sup>180</sup> Many modern Haredim (also known as “ultra-Orthodox”) continue to be indifferent to the affairs of the State of Israel.<sup>181</sup> Moreover, the ideological founder of religious Zionism, Abraham Kook, appears to have privileged militarism even over strict observance of Jewish law. As the chief Ashkenazic rabbi of Palestine in the 1920s, Kook “welcomed a return of Jews to manual labor, physical culture, and military valor, even if most broke Torah commandments in the process.”<sup>182</sup> According to Kook, “the functioning of spiritual inspiration will restore to the nation its ancient honor by restoring the patriarchal dignity of Israel’s princes.”<sup>183</sup> Nevertheless, Kook’s followers also adopted a very strict approach to *halakha*.<sup>184</sup> This combination of patriarchal attitudes and right-wing, militaristic beliefs places Jewish fundamentalism comfortably within the framework that Gilligan and Richards have described.

Even more interesting is the role of trauma in the rise of the religious Zionist movement. Although certain Orthodox sects, such as the *haredim*, historically do not participate in the Israeli military, the religious Zionist movement is difficult to extricate from the legacy of decades of military conflict in Israel. Disillusionment caused by the Yom Kippur War led many religious Israelis to embrace religious Zionism as a theological solution to Israeli-Arab conflict.<sup>185</sup>

The trauma of the Holocaust also dramatically influenced religious Zionist thought. For example, Harold Fisch, a religious Zionist, argued that the Holocaust was a “commandment” from God that the Jewish people return to Palestine, “written in blood upon the soil of Europe.”<sup>186</sup> This commandment, he argued, was made necessary by contemporary Orthodox opposition to the Zionist movement. Fisch warned that unless present-day religious au-

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underground group that carried out attacks against Arabs in the West Bank, Christian missionaries in Jerusalem, and “dovish” Israeli Jews; in 1984, Kahane was later elected to a position in the Knesset, Israel’s parliamentary body); Sprinzak, *supra* note 177, at 121 (discussing Kahane’s influence on Baruch Goldstein, who killed twenty-nine Muslims praying in a mosque). Incidentally, while Kahane’s followers did not express remorse over Rabin’s assassination, they were significantly marginalized in its aftermath. Sprinzak, *supra* note 177, at 126.

<sup>180</sup> See LUSTICK, *supra* note 154, at 21–26 (discussing rabbinic responses to the Jewish revolts against Rome and its legacy of rabbinic opposition to violent resistance, messianism, and attempts at forcible return to Israel).

<sup>181</sup> *Id.* at 7.

<sup>182</sup> *Id.* at 31.

<sup>183</sup> *Id.* at 33.

<sup>184</sup> Sprinzak, *supra* note 177, at 118–19.

<sup>185</sup> See LUSTICK, *supra* note 154, at 42–71.

<sup>186</sup> See *id.* at 86 (quoting HAROLD FISCH, *THE ZIONIST REVOLUTION: A NEW PERSPECTIVE* 85 (1978)).

thorities “have learned to hear the voice of the God of Israel speaking to us from the fire of history,” they will repeat the same mistake in failing to grasp the significance of the current struggle to retain Jewish control over the territories, leading to further destruction.<sup>187</sup> Similarly, Menachem Kasher, another member of a religious Zionist movement, argued that the Holocaust constituted the “birthpangs of the Messianic Age (which) fell upon our generation and thus opened for us the way to Redemption.”<sup>188</sup>

Much like Aeneas, Fisch and Kasher respond to earth-shattering trauma, by identifying with what they perceive to be the divine, patriarchal source of that trauma. This identification disrupts their ability to make independent moral judgments: if God saw fit to send a Holocaust in order to bring about Jewish control over Israel, it is difficult to argue that any further loss of life is too much of a sacrifice in order to retain Israeli sovereignty over the West Bank and Gaza. Loss of life is therefore rationalized as an unfortunate, but inevitable part of the coming Redemption.<sup>189</sup>

Jewish fundamentalism, particularly religious Zionism, thus clearly fits Gilligan and Richards’s definition of a patriarchal movement. Rooted in trauma, religious Zionism embraces rigidly patriarchal norms about gender and sexuality, while advocating a militaristic ethos premised on a divinely mandated hierarchy of Jews over their perceived enemies. The movement is also inherently undemocratic, as it privileges source-based ideology over the democratic process and labels democratically-elected leaders who violate these norms, such as Rabin, as traitorous and illegitimate.<sup>190</sup>

This is not to argue that Jewish fundamentalists constitute a majority of Israel’s population, nor do I believe any comparison of the “degrees” of fundamentalism of Jewish and Islamic fundamentalists would be at all productive. Moreover, in my criticism of the patriarchal militarism found in the Religious Zionist movement, I am bracketing discussion of concrete elements of Israeli military policy. As Richards noted in his recent book, *Disarming Manhood*, not all calls for military action are inherently patriarchal.<sup>191</sup> However, because, according to the authors, patriarchy stifles individual compassion and ethical voice, it stands to reason that those concerned with the ethicality of a nation’s policy must necessarily be alert to the influence of patriarchal trends in its culture.

<sup>187</sup> See *id.*

<sup>188</sup> See *id.* at 86 (quoting MENACHEM KASHER, *THE GREAT ERA* 32 (1968)).

<sup>189</sup> See *id.* at 82 (“Wars are to be seen as a natural and expected, if unfortunate, part of the redemption process. ‘It is impossible,’ in fact, ‘to complete the Redemption by any other means.’”).

<sup>190</sup> See, e.g., Sprinzak, *supra* note 177, at 124 (discussing Zionist rabbis’ responses to the Oslo Agreements, which they saw as conflicting with religious prohibitions against giving Jewish property to Gentiles, even though the Agreements were endorsed by Israel’s then-Prime Minister Yitzhak Rabin); see also Genut, *supra* note 162, at 2158 n.347 (discussing the position of some extreme groups, such as Agudat Israel, that Jewish law should replace Israel’s constitution).

<sup>191</sup> RICHARDS, *DISARMING MANHOOD*, *supra* note 13, at 181–210 (discussing Winston Churchill’s calls for British military response to the increasing threat of Nazi Germany).

Moreover, if the premise of *The Deepening Darkness* is to be taken seriously, fundamentalism in Israel should be seen as a threat not only to the legitimacy of its military policies, but also to its democracy, much as Christian fundamentalism and constitutional originalism threaten the United States' democracy. It is important to note that Israel's fundamentalist-leaning religious parties, such as the United Torah Party and Shas, have in the recent years wielded significant political influence, becoming essential parts of majority coalitions in the Knesset, Israel's parliament.<sup>192</sup> Moreover, because of religious Zionism's connection with the Israeli settler movement,<sup>193</sup> many Palestinians' firsthand experiences with Jews are with fundamentalists, not with Israel's permissive, secular majority; thus, it may be overly simplistic to characterize anti-Semitism among Muslim Palestinians as merely fundamentalist hostility toward a secular, egalitarian culture.<sup>194</sup>

In addition, religious Zionists are not the only political movement in Israel that could reasonably be called patriarchal: Avigdor Lieberman's party, Yisrael Beteinu, may be an example of an essentially nonreligious antidemocratic movement in Israel.<sup>195</sup> Although Yisrael Beteinu supports some policies that religious Zionists often oppose, such as civil marriage and a two-state solution,<sup>196</sup> it also supports conditioning Israeli citizenship on willingness to take a loyalty oath to the State of Israel and its symbols.<sup>197</sup> This policy is widely seen as an attempt to divest Arab Israelis of their citizenship.<sup>198</sup> Yisrael Beteinu also advocates dividing the two states of Israel and Palestine along ethnic lines so as to exclude primarily Arab areas from

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<sup>192</sup> See Ashraf Khalil, *Q & A: Livni Seeks the Missing Pieces*, L.A. TIMES, Oct. 23, 2008, at A3 (discussing the influence of Shas and the United Torah Party on a potential government coalition); Cam Simpson, *Israel's Prime Minister-Elect Seeks to Rebuild Coalition*, WALL ST. J., Sept. 19, 2008, at A16 (stating that, in the Israeli parliament, "The balance of power in the government is now held by the Shas party, which represents primarily ultra-orthodox Jews from Middle Eastern countries. Maintaining Shas support would be the easiest way for [Prime Minister-elect] Ms. Livni to keep a Kadima government intact."); see also Capell, *supra* note 160, at 343 (discussing the role minority parties have played in creating majorities in the Knesset).

<sup>193</sup> See Lustick, *supra* note 154, at 10; see also Yehudah Glick, *Religious Zionism Lost*, HAARETZ, Feb. 12, 2009, at 7, available at <http://www.haaretz.com/hasen/spages/1063616.html> (alluding to discussions among religious Zionists over whether settlers should obey military orders to leave their homes, should Israel pursue a disengagement plan).

<sup>194</sup> Cf. GILLIGAN & RICHARDS, *supra* note 1, at 257 ("Fundamentalist Islamic states are particularly affronted by the life and politics of a democratic, liberal Israel.").

<sup>195</sup> See Zeev Sternhell, *Lieberman is No Better Than Feiglin*, HAARETZ, Feb. 20, 2009, at B5, available at <http://www.haaretz.com/hasen/spages/1065692.html> (comparing Yisrael Beteinu to the ultra-Orthodox parties, which "represent those in our society who have authoritarian temperaments and tendencies").

<sup>196</sup> See Mualem, *supra* note 168.

<sup>197</sup> See Haaretz Editorial, *Keep Lieberman Out of the Government*, HAARETZ, Feb. 20, 2009, at B5, available at <http://www.haaretz.com/hasen/spages/1065694.html> (mentioning Lieberman's campaign slogan, "No citizenship without loyalty").

<sup>198</sup> See *id.*

Israel, even those areas that were part of Israel's original territory.<sup>199</sup> Such propositions may be seen as violating the values of equality and freedom of conscience that Gilligan and Richards consider essential to democratic, as opposed to patriarchal, societies.

The trauma experienced by much of Israel's populace due to its frequent involvement in conflict and near-universal military service,<sup>200</sup> combined with the lingering trauma of the Holocaust, may, if Gilligan and Richards's theory is correct, render Israel particularly vulnerable to patriarchal political movements.<sup>201</sup> This vulnerability may be further exacerbated by strict religious control over marriage law, which may disrupt or symbolically devalue loving relationships among Israelis and affirm restrictive interpretations of *halakha*. Much as Freud rejected the nonaggression of his Jewish father in response to an anti-Semitic insult and instead aligned himself with aggressive, patriarchal ideals of manhood,<sup>202</sup> Israel risks adopting a patriarchally militaristic society and rejecting the antipatriarchal features of historical Jewish societies that Gilligan and Richards value so highly in Jewish society.

## V. CONCLUSION

Commenting on the title, *The Deepening Darkness: Patriarchy, Resistance, and Democracy's Future*, Gilligan and Richards note that it "conveys [their] impression that this darkness [of patriarchy] is now deepening, posing a threat to democracy's future, but [they] also were inspired by Freud, who writes . . . of his need to deepen the darkness so as to see what has faint light to it."<sup>203</sup> Here, the authors are referring to their attempts to focus on the darkest spots of patriarchy in order to discern the "shoots of ethical resistance";<sup>204</sup> however, the reverse of this metaphor could easily describe the questions that the book leaves unanswered. As the book's discussion ranges over two thousand years of history, several novels, and a broad range of contemporary issues, the reader may find herself reminded of a candle that illuminates some parts of a room while simultaneously calling attention to the parts that remain in darkness.

Thus, while *The Deepening Darkness* entices readers with a new theory of patriarchy, several parts remain vulnerable to critique, as in its discussion of the role of close relationships in resisting or perpetuating patriarchal norms. Other parts, such as its discussion of contemporary global politics,

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<sup>199</sup> See Uri Dromi, *Opinion: Israeli Arabs and the Vote*, INT'L HERALD TRIB., Mar. 24, 2006, at 6.

<sup>200</sup> Israel's universal military service importantly contrasts with historical Jewish experience in Europe, in which Jews were prohibited from military service. GILLIGAN & RICHARDS, *supra* note 1, at 132.

<sup>201</sup> In fact, Gilligan and Richards acknowledge this possibility. See *id.* at 257.

<sup>202</sup> See *id.* at 178-79.

<sup>203</sup> *Id.* at 1.

<sup>204</sup> *Id.*

are in need of further elaboration. The authors, it appears, are quite happy to leave these tasks to the reader, and, to that end, chose to end the book with a question: “why is the love of equals unmanly?”<sup>205</sup>

—*Samantha Crane\**

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<sup>205</sup> *Id.* at 267.

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