

# THE LEGACY OF LOVING

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*Loving v. Virginia* held unconstitutional laws that forbid interracial marriages. This article argues that the legacy of *Loving*, in light of later constitutional developments (including the constitutional recognition of gay marriage), should be understood in terms of the larger political and psychological evil of state enforcement of Love Laws, the patriarchal laws that “lay down who should be loved, and how. And how much.” Arundhati Roy. *Loving* and later constitutional developments express the freeing of ethical voice that arises not only from breaking, but resisting the Love Laws. The article contrasts breaking and resisting the Love Laws through a comparison of the life of the great black gay novelist, James Baldwin, and the life of the young black boy and man in the 2016 movie, *Moonlight*. The freeing of ethical voice by resisting the Love Laws is also investigated in the interracial marriage of the parents of Barack Obama and its impact on their son. Such resistance—as in the civil rights and anti-war movements as well as second-wave feminism and gay rights—is often met with a reaction patriarchal politics, illustrated by the recent election of a patriarchal man, Donald Trump, to the American presidency. Resistance to patriarchy is now, for this reason, more needed than ever.

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There are two remarkable movies that opened in New York City late in 2016—*Loving*<sup>1</sup> and *Moonlight*,<sup>2</sup> both of which moved me and the students I was then teaching in the seminar, “Resisting Injustice,” that Carol Gilligan and I have co-taught at NYU School of Law for many years. *Loving* dealt with the love between a white man and black woman whose marriage was criminalized by Virginia as a violation of that state’s anti-miscegenation laws, laws struck down as unconstitutional by the Supreme Court of the United States in *Loving v. Virginia*.<sup>3</sup> *Moonlight* examined three stages in the development of a black, gay man—boyhood,

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<sup>1</sup> *LOVING* (Raindog Films 2016).

<sup>2</sup> *MOONLIGHT* (A24 2016).

<sup>3</sup> *Loving v. Virginia*, 388 U.S. 1 (1967).

adolescence, and adulthood. In boyhood, the boy's single mother is a drug addict, and his only experience of care is that of a drug dealer and the drug dealer's girlfriend; when the boy asks the drug dealer what a "fag" is, the dealer responds that is what some people condemn because it is love between men, but the condemnation and the reality are two quite different things. In adolescence, the boy has his first sexual experience with another boy while in high school, but, in the homophobically bullying environment of the school, the other boy—urged on by one of the school bullies—beats up his erstwhile lover, who refuses to fight back. The boy, furious at the bully who prompted his violent humiliation, breaks a chair over the bully, leading to bad consequences for the boy and his future. In adulthood, the boy has become a rather armored, physically muscled drug dealer, and is telephoned by his former lover (now a cook who wants to cook for him), whom he meets. He confesses after his meal that he has experienced no other sexual intimacy since his adolescence. The lover, himself now estranged from his straight marriage and struck by remorse, takes the damaged drug dealer in his arms as the movie ends. What did these two movies have in common that had such resonance for me and my students late in 2016, around the time of an election that shocked them and me? In this essay, I examine the legacy of *Loving* through the prism of our discussions in "Resisting Injustice" and use the analysis to illuminate what many of us found so resonant in the leadership of Barack Obama, and why others were so repelled. I conclude with some reflections on the recent election, and the need for resistance.

## I

### BREAKING THE LOVE LAWS

Why was *Loving* so alive for me and my class, and why did we have one of our best discussions when I asked them to address love across the boundaries of race and gender, comparing the boy and man in *Moonlight* with the development of the great black, gay artist and activist James Baldwin?

My question for that week arose from my recently published book, *Why Love Leads to Justice: Love Across the Boundaries*.<sup>4</sup> We had discussed in the seminar for the past weeks what Arundhati Roy, the Indian novelist, called the Love Laws: the patriarchal laws that "lay down who should be loved, and how. And how much."<sup>5</sup> In her important book, *The Birth of Pleasure: A New Map of Love*,<sup>6</sup> Carol Gilligan argues that the Love

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<sup>4</sup> DAVID A.J. RICHARDS, *WHY LOVE LEADS TO JUSTICE: LOVE ACROSS THE BOUNDARIES* (2016).

<sup>5</sup> ARUNDHATI ROY, *THE GOD OF SMALL THINGS* 33 (1998).

<sup>6</sup> CAROL GILLIGAN, *THE BIRTH OF PLEASURE: A NEW MAP OF LOVE* (2003). For her

Laws are fundamental to the crippling psychological power patriarchal cultures (through their initiations into manhood and womanhood) inflicted on the psyches of men and women. In our co-authored book, *The Deepening Darkness: Patriarchy, Resistance, and Democracy's Future*,<sup>7</sup> we explain the psychological power of such initiations in terms of traumatic breaks in relationship, replacing relationships with identifications with falsifying gender stereotypes. Carol called this the gender binary and hierarchy required by “patriarchy”—“an anthropological term denoting families or societies ruled by fathers. . . . [I]t elevates some men over other men and all men over women; within the family, it separates fathers from sons (the men from the boys) and places both women and children under a father’s authority.”<sup>8</sup> The key to such patriarchal psychology is trauma, the marks of which are a disassociating loss of voice and memory, which explains why patriarchy is so difficult to see and so easily marginalized, if not dismissed. To the loss of voice and memory that patriarchy inflicts, there is further its legitimation of repressive violence against any challenge to its authority.

This violence includes the sometimes incendiary violence inflicted on any deviation from the Love Laws, which brings us, of course, to the incendiary violence inflicted on any alleged breaking of the racist anti-miscegenation criminal codes, struck down as unconstitutional by the United States Supreme Court in *Loving v. Virginia*. These codes only make sense when seen against the background of the patriarchal racial and gender hierarchies they enforced. The exploitation by Southern white men of black women—endemic under slavery and continuing long after—was not regarded as breaking these codes, because such intimacies did not disturb, but rather exemplified, the patriarchal hierarchy (i.e. white men exploiting black women). Marital love of the sort exemplified by *Loving* unthinkable broke this hierarchy and was also thus condemned. What also challenged this highly racialized and gendered hierarchy was consensual love between a white woman, no longer on her desexualized, idealized pedestal of Southern patriarchal womanhood, and a black man. It was breaking the Love Laws in this way that unleashed the incendiary violence of Southern lynchings, as Ida Wells-Barnett, the black journalist, cogently argued when she found that lynchings of black men often did not involve sexual relationships at all (but only white jealousy of black business success) and, when they did, involved the consensual sexual choices between Southern

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discussion of Roy, see *id.* at 9, 171–77, 182, 189.

<sup>7</sup> CAROL GILLIGAN & DAVID A.J. RICHARDS, *THE DEEPENING DARKNESS: PATRIARCHY, RESISTANCE, AND DEMOCRACY'S FUTURE* (2009).

<sup>8</sup> *Id.* at 22.

white women and black men.<sup>9</sup>

Carol and I had come to see in our collaborative work that the incendiary violence unleashed on those who crossed the boundaries of race was a general feature of many other forms of what we came to call love across the boundaries not only of race/ethnicity but also of religion or caste or gender. Such incendiary violence led us to see the crucial role the Love Laws played in the psychology of patriarchy, not only holding men and women in their patriarchally assigned roles, but also cutting off any moral or empathetic feeling for outsiders—the psychological root, we came to believe, of the irrationalist political evils of anti-Semitism, racism, sexism, and homophobia, all of which involve violence and sometimes genocidal atrocity.

In my thinking about these matters, which culminated in the argument of *Why Love Leads to Justice*, I had come sharply to distinguish breaking the Love Laws from resisting them. Breaking the Love Laws was incendiary, so why break them? Resisting the Love Laws calls for breaking them in a very different way and spirit, namely, coming to see that the condemnation inflicted by the Love Laws, often psychologically internalized, was unjust precisely because the experience of genuine love across the boundaries freed a resisting voice to question and reject patriarchy and its attendant irrationalist political evils. This had certainly been my experience as a gay man in a loving relationship with a man (my equal in every way) whom I have shared my life with for some forty years. Through the close study of a range of straight and gay/lesbian relationships in my book, I had come to believe and to argue that such love across the boundaries (whether straight or gay) freed an ethical voice, as it had mine, that not only freed oneself from irrational self-hate but also exposed and empowered a larger resistance to patriarchy and its attendant anti-democratic evils, as Carol and I argued at length in *The Deepening Darkness*. I believe my argument in *Why Love Leads to Justice* supports this claim: How otherwise do we understand the extraordinary ethical creativity of a John Stuart Mill, an Eleanor Roosevelt, a James Baldwin, a Margaret Mead, or a Ruth Benedict?

## II

### JAMES BALDWIN AND MOONLIGHT

My study of the life of James Baldwin in my book was much the most illuminating to write, and, when it came to discussing the book in the

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<sup>9</sup> For fuller documentation, see DAVID A.J. RICHARDS, *WOMEN, GAYS, AND THE CONSTITUTION: THE GROUNDS FOR FEMINISM AND GAY RIGHTS IN CULTURE AND LAW 185–90* (1998) [hereinafter *WOMEN, GAYS, AND THE CONSTITUTION*] (explaining Ida Wells-Barnett's critique of the women's suffrage movement).

seminar, I asked the students to focus on this chapter in my argument. Having just seen *Moonlight* the week before with my partner and my sister, I asked the students to compare the journey of Baldwin to that of the boy and man in *Moonlight*. Why Baldwin? And, why *Moonlight*?

My study of the life and works of James Baldwin led me to understand the remarkable developmental journey that led to the astonishing ethical creativity, and perhaps the most astonishing example I had found, of the psychological and ethical freeing of voice I called resisting injustice. Baldwin was a gay black man born and raised in Harlem, New York City. The only father he knew was his violently abusive step-father, a religious preacher who preached racism (all white men were devils), homophobically condemned his effeminate step-son as ugly and unmanly, and ended his life insane. Baldwin was not only black and gay, but also—in terms of the values of gay life in New York City at the time—physically unattractive and flamboyantly effeminate, repelling to many gay men in that place and time (and long thereafter). While he had some affairs with women, his sexual experiences in New York City were largely with rather homophobic and closeted gay men, and Baldwin—himself quite self-hating at this point of his life—suicidally endured such violence as what he thought gay intimacy only could be. (Baldwin tried to commit suicide at least three times in his life.) Friends urged him to leave New York City, fearing he would self-destructively be killed. He took their advice, though it must have been emotionally difficult for him to leave his beloved mother and his many half-brothers and sisters whom he loved and largely supported at the time (in the absence of his step-father). What Baldwin found in Paris was the love of his life, a loving relationship to another man, and a white Swiss man at that: Lucien. It was in his loving sexual and emotional relationship to Lucien that Baldwin first experienced what love was and could be. Freed from the self-hating violence of American homophobia and through the experience of gay love, Baldwin—with Lucien as his companion—freed his ethical voice in his remarkable essays on American racism (as a harm to both whites and blacks) and in his first great novel, the pathbreaking *Giovanni's Room*,<sup>10</sup> dealing with an American man's difficulties in accepting his gay love for an Italian (racialized) man.<sup>11</sup> The relationship to Lucien did not last, but Lucien was with him at Baldwin's death. After Lucien, Baldwin's life always searched for a lasting gay relationship. Having tasted and experienced gay love, he knew he must write from and defend the experience that had saved his life and made psychologically possible his creative voice as a writer and

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<sup>10</sup> JAMES BALDWIN, *GIOVANNI'S ROOM* (1956).

<sup>11</sup> For discussion of the novel, see RICHARDS, *WHY LOVE LEADS TO JUSTICE*, *supra* note 4, at 163–64.

activist in the civil rights movements in the United States, in which he was an important participant.<sup>12</sup>

I had asked the students in the seminar, “Resisting Injustice,” to compare the journey of two black, gay men: James Baldwin and the boy and man in *Moonlight*. All of their responses were, I thought, memorable and insightful, as I illustrate by discussing several of them now.

First, a man of color—who had long regarded James Baldwin as the most “objective” black writer among other black writers on racism whom he had spent a lifetime reading and studying in-depth—remarked that Baldwin’s developmental journey clarified for him Baldwin’s fierce and clear-eyed objectivity of the harms racism inflicted not only on people of color, but also on whites. What made his “objectivity” psychologically possible is that Baldwin only came to understand how American he was when he went to Europe and experienced the love of another man of a different nationality and race. Circumstances had compelled Baldwin, quite painfully, to become an outsider to American racist and homophobic patriarchy, but it was his very experience of love across the boundaries as an outsider that made him understand the culture that he still loved—the culture that gave rise to and was influenced by the civil rights movement—but that had nearly killed him. But, Baldwin, who wrote all his novels while living in Europe, returned to America again and again, actively supporting the civil rights movement (he said Martin Luther King, Jr., was the only minister he ever liked, having in mind his step-father’s racist and homophobic violence) and staying in relationship to and supporting his beloved family.

Baldwin, in contrast to another great black novelist of his period, Richard Wright, always remained emotionally and ethically connected to the Christianity of his youth, which explains his understanding of and support for the role the Black churches and Martin Luther King, Jr., played in the transformative achievements of the civil rights movement. So, Baldwin was both outside and inside American patriarchy, exemplifying what Virginia Woolf in her brilliant essay *Three Guineas*, called the imperative ethical need for “the Outsiders’ Society,”<sup>13</sup> persons who understand they live within patriarchy but are also outside it, who can see and resist its demands. Woolf believed “the daughters of educated men”<sup>14</sup> were one such group of persons (an argument that resonated with many of our students, who, as law students, saw law as a still-patriarchal profession and found in Woolf’s argument a strategy of resistance). Baldwin’s experience as an outsider, in Woolf’s sense, clarifies how he came to see

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<sup>12</sup> For fuller discussion of all these points, see *id.* at 150–81.

<sup>13</sup> VIRGINIA WOOLF, *THREE GUINEAS* 126 (Mark Hussey ed., 2006).

<sup>14</sup> *Id.* at 125.

and write of the problem of patriarchy largely invisible to most Americans in his period. Thus, his “objectivity.”

Two other students—a woman of color and a white woman—made piercing observations in response to the comparison of Baldwin’s journey and the three acts of *Moonlight*. The woman of color observed that Baldwin experienced resistance through the remarkable intersectionality of his resistance: not only a black and gay man, but also an effeminate gay man, thus challenging not only stereotypes of race and sexual orientation, but of gender as well, which accounts for how and why he resisted the role patriarchy plays not only in racism and homophobia, but in sexism as well. That is what makes his voice so ethically transformative as he writes from a sense of our common humanity which he had found through and because of his experience of love, as the person he was, across so many boundaries.

The white woman pointed to four important differences between Baldwin’s journey and that of the man in *Moonlight*. First, there was Baldwin’s experience of the deep and abiding love of his mother as well as his sisters and brothers, to whom he always stayed in relationship. In *Moonlight*, there is an addicted mother, who only comes later to realize what her abandonment had meant to her son and begs his forgiveness, and a drug dealer who disappears as a presence in the boy’s life (there is a beautiful scene, early in the movie, in which the drug dealer teaches the boy to swim, holding him up on his back in the water—an image of care and freedom). Second, Baldwin, always a passionate reader (particularly devoted to the novels of Henry James) and an autodidact, never goes to university, but he is by any measure very well educated.<sup>15</sup> Importantly, Baldwin had a quite good education in the admirable New York City public schools of his period in which teachers, white and black, recognized early his brilliance and introduced him to literature and New York City theater; many of his friends were white Jewish boys. Third, Baldwin comes to experience sexual love in Europe, whereas the adolescent in *Moonlight* is homophobically beaten by the boy he thought he loved and loved him. And, fourth, Baldwin never covers his homosexuality, but is flamboyantly and effeminately gay. The adolescent in *Moonlight* is much more circumspect. He certainly does not proclaim his homosexuality, and is homophobically beaten by his erstwhile lover. In the third act of his life, portrayed in *Moonlight*, the fearful, lonely, and physically slight boy has, through the trauma of homophobic abuse and abandonment, becomes

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<sup>15</sup> John Stuart Mill, perhaps the best-educated man of his age, never attended either of Britain’s great universities, as his father did not regard them as serious institutions of learning but rather finishing schools for the aristocracy. See, on this point, RICHARD REEVES, JOHN STUART MILL: VICTORIAN FIREBRAND 41 (2007) (describing the dismissive attitude of Mills’s father towards Britain’s great universities).

physically unrecognizable—a muscled and armored drug dealer who has not experienced sexual intimacy since his adolescence. Seeing the movie, another woman of color in the class observed, was a deeply moving shock of recognition of what black men endure when they break the patriarchal Love Laws. What she saw in the movie was all too real, resonant, and contemporary. If there is a continuing problem of black manhood, patriarchy is at the heart of it.

So, a 2016 movie based on a Supreme Court case in 1967 showed—in the voices and experiences of my students and myself—that the issues of *Loving* remain all too real: breaking the Love Laws remains all too incendiary and traumatic in the experience of black, gay men today, as *Moonlight* makes clear. The legacy of *Loving* is that in that case the Supreme Court was the forum of principle that recognized the resisting voice of an interracial couple in love, the forum that was later to recognize the voices of gay/lesbian couples very much in love to marry as a basic constitutional right. There is a principle of law that extends to both cases, and we have come to recognize it through lovers who resisted the Love Laws central to patriarchy.

### III

#### BREAKING THE LOVE LAWS: THE PARENTS OF BARACK OBAMA

Baldwin's resistance to patriarchy shows how such resistance connects the personal and the political, and perhaps there is no better contemporary example of this connection than the journey of President Barack Obama. In our seminar, Carol Gilligan and I have the students read Obama's autobiography, *Dreams from My Father*.<sup>16</sup> Obama was the product of an interracial marriage, a white mother and a black, Kenyan father, exactly the kind of sexual relationship—a white women choosing a black man—that is, under patriarchy, most incendiary. How could this fail to be significant in understanding Obama's journey and how and why his political voice has been for many of us so resonant, and for others the object of such unjust denigration, lies, and irrationally violent rejection?

What makes Obama's autobiography so interesting, from the point of view of the argument of this essay, is that his mother—the central figure in his life—not only broke, but also resisted the Love Laws. As a white women, she not only acted on her desire for the black Kenyan she had come to love (marrying him), but her resistance to the Love Laws also took the form of a larger ethical commitment to the values of the resistance movements she experienced during her life time—in particular, the anti-

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<sup>16</sup> BARACK OBAMA, *DREAMS FROM MY FATHER: A STORY OF RACE AND INHERITANCE* (rev. ed., 2004).



racism of the civil rights movement and second-wave feminism. His mother's life embodied the values of second-wave feminism, including her advanced education and research in the social anthropology of Indonesian life, and her later work on woman's issues in third world countries. Nonetheless, she always remains in relationship to her son, stimulating his educational performance. There is also the model of his maternal grandmother, who is more successful in her career in banking than his grandfather. In contrast, Obama barely knows his father, who abandons the family when he is a child and only visits him briefly later in Hawaii (Obama doesn't much like his father's commanding ways). Obama is brought up by his mother, who later marries another man of color, an Indonesian, and by his white grandmother and grandfather. What Obama knew of his father, he learned from his mother, who communicated to him the promise and ambition of the man with whom she had fallen in love. Obama's own ambition may be traced to the model she imparted to him—that his father was a Kenyan who would ethically and politically lead his third world country into democracy and the modern world. It is only at the end of his autobiography that Obama actually goes to Kenya and confirms the truth—that his father was an abusively violent patriarchal husband to his other wives; an alcoholic who had not fulfilled his promises. His father had come to accept too much of the old world:

Too much of its rigidness, its suspicions, its male cruelties. Too little of the laughter in Granny's voice . . . . The loyalty that could make up for a lack of airplanes or rifles. Words of encouragement. An embrace. A strong, true love. For all your gifts—the quick mind, the powers of concentration, the charm—you could never forge yourself into a whole man by leaving these things behind.<sup>17</sup>

When Obama had earlier come to learn in Chicago about the truth of his father's life from his sister Auma, he experienced a revelation and release:

Now, as I sat in the glow of a single light bulb, rocking slightly on a hard-backed chair, that image had suddenly vanished. Replaced by . . . what? A bitter drunk? An abusive husband? A defeated, lonely bureaucrat? To think that all my life I had been wrestling with nothing more than a ghost? For a moment I felt giddy . . . . The king is overthrown, I thought. The emerald curtain is pulled aside. . . . I can do what I damn well please. For what man, if not my own father, has the power to tell me otherwise?<sup>18</sup>

Once freed from the no longer authoritative patriarchal image of his father, Obama experiences a freedom from the patriarchal demands that

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<sup>17</sup> *Id.* at 429.

<sup>18</sup> *Id.* at 220–21.

had destroyed his father and centers himself in a “strong, true love”<sup>19</sup> with a woman very much his equal, a conviction of respect for woman as equals he had learned from his mother’s resistance to the Love Laws.

Obama’s journey is thus into a sense of being an anti-patriarchal man, knowing, as he came to learn through the narrative he tells in his autobiography, that patriarchy is as harmful to men as it is to women. His mother’s resistance to the Love Laws thus made possible not only his own embrace of equality in love in his personal life, but also the ways in which the resistance movements, in which his mother had been an agent and participant, became the inspiration for his own political life. If I am right about this, it clarifies why the expansion of health care access, a prominent demand of a feminist ethics of care,<sup>20</sup> was the signature achievement among his domestic policies.

#### IV

##### REACTIONARY PATRIARCHY IN THE ELECTION OF TRUMP IN 2016

While these features of Obama’s background may have made his voice so resonant for many of us, the same features may clarify why his leadership has been so unfairly contested, including the sense of him as an outsider (including Donald Trump’s support for the birther claim, only withdrawn late in his campaign for the presidency<sup>21</sup>). There is a sense in which Obama, like James Baldwin, is an outsider. Obama was brought up by a white mother and white grandparents in Hawaii, an ethnically diverse state with few blacks and less racism than many parts of America. He only encounters American racism in its full force when he come to the continental United States for higher education, and thus faced a choice of identity, leading him to fall in love with and marry an accomplished black woman, clearly his equal, and falling in love as well with her family in Chicago, aligning himself with the American civil rights tradition of resistance to racism. But, Obama was not only an outsider among American people of color, he was also, as I have suggested, an outsider to American patriarchy, struggling, in contrast to his father, to center his life and work in an equal love. What made him so attractive to many of us was that he, like us, had found love through resistance to patriarchy, including resistance to the range of evils patriarchy supports and enforces. But what

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<sup>19</sup> *Id.* at 429.

<sup>20</sup> See DAVID A.J. RICHARDS, RESISTING INJUSTICE AND THE FEMINIST ETHICS OF CARE IN THE AGE OF OBAMA: “SUDDENLY, . . . ALL THE TRUTH WAS COMING OUT” 127 (2013) [hereinafter RESISTING INJUSTICE AND THE FEMINIST ETHICS OF CARE IN THE AGE OF OBAMA] (connecting Obama’s advocacy around healthcare to the feminist ethics of care).

<sup>21</sup> Stephen Collinson & Jeremy Diamond, *Trump Finally Admits It: ‘President Barack Obama Was Born in the United States’*, CNN, Sept. 16, 2016, [www.cnn.com/2016/09/15/politics/donald-trump-obama-birther-united-states/](http://www.cnn.com/2016/09/15/politics/donald-trump-obama-birther-united-states/).

appealed to us clearly repelled others. This may explain why the opposing political party mindlessly refused to work with him, a strategy that appears to have more successful than many of us supposed, as the reactionary politics leading to the election of Donald Trump appears to show. Why? It is surely a familiar feature of recent presidential American history that presidential elections have been won by a reactionary politics that sought to limit and even reverse important ethical advances like those achieved by resistance movements including civil rights and anti-Vietnam War and second wave feminism and, more recently, gay/lesbian rights. The elections of Nixon, Reagan, and both Bushes may plausibly thus be understood as bequeathing to us, through the War on Drugs, the injustice of mass incarceration. All these ethical movements are, as we have argued in our book, forms of ethical resistance to patriarchy. It is because their resistance was so unprecedented, against the background of the hegemonic dominance of patriarchy in American democracy, that a reactionary presidential politics has been so successful and so destructive of our democracy. The presidency of Barack Obama embraced and sought to deepen and expand the democratic values of these resistance movements, embracing a feminist ethics of care that prominently included expanding the scope of access to health care to include twenty million more people.<sup>22</sup> Obama's resistance to patriarchy elicited a reactionary politics not only in the politics of the Republican Party which would not support his policies, but also in the campaign and election of Donald Trump.

Trump's campaigning voice was always authentic and violently incendiary for his followers because it was not "politically correct." Why was this regarded by his followers, no matter how offensive they may have acknowledged his speech sometimes was, as appealing? Just listen. We know we are within patriarchy when politicians use the gender binary: sharp distinctions of male and female, and men hierarchically over women. The tone of Trump—the ways he used his voice and the appeals he made in that voice—was highly patriarchal: for example, his success as a narcissistically boastful business leader, us versus them, winners versus losers, scapegoating ethnic and religious minorities and women, and, most strikingly, appealing to the shaming of patriarchal American manhood eliciting violence, an impulse which suggests the mindless violence of Italian and German and Japanese fascism, which was also highly patriarchal. Supporters of Trump found his voice authentic, and indeed it was: authentically patriarchal. Its appeal was certainly not because of his arguments, as Trump had little interest in policy and his rhetoric was often

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<sup>22</sup> On the feminist ethic of care and how Obama's policies (including his concern for expanding health care) reflect this ethic, see generally RICHARDS, RESISTING INJUSTICE AND THE FEMINIST ETHICS OF CARE IN THE AGE OF OBAMA, *supra* note 20.

false and violent, in particular, when there was no basis for his charges (“lock her up”). Populist appeal to voters is not always or even often democratic. Consider fascism (some commentators argue Trump’s success requires closer study of analysts of the rise of German fascism<sup>23</sup>). Trump’s own highly personal sense of shamed patriarchal manhood elicited a response in many of the Americans who voted for him because his own rage at the shaming of his patriarchal manhood resonated with the Americans, including working class white men and women, who felt through him their own sense of rage at the groups, including people of color, educated women, male professionals, gays, and lesbians, who had done better than them and shamed them as patriarchal men and women assuming a hierarchy now very much at threat.<sup>24</sup> Importantly, the belief in this hierarchy “appears to be less tied to traditional gender roles for blacks than for whites,”<sup>25</sup> clarifying why a woman president was less threatening to black people than to white people. There is, of course, a stark irrationalism in white working class men directing their rage at black people and women and professionals and gays, but not at Donald Trump, a narcissistic man whose interest is passionately in himself and whose policies would be less in *their* interest than those of Hillary Clinton, who called for redistribution of wealth from the very wealthy to the middle and lower classes, lessening widening economic inequality in the United States—the key, I believe, to responsibly addressing America’s epidemic of violence.<sup>26</sup> But my point is that we are not dealing here with deliberative democratic argument, but with an irrationalist patriarchal rage, an issue of emotion, not of ideas—there is, as Arlie Hochschild makes clear, “the Great Paradox,”<sup>27</sup> of people voting so against their interests. This makes sense, however, only if patriarchy remains very much intact both in American men and women, as it is in these Trump supporters, drenched in patriarchal culture and religion that they experience now at deadly threat. Women in such a culture, sensing the rage of their patriarchal husbands or brothers or fathers, may protect them from such vulnerabilities by allying

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<sup>23</sup> See Alex Rose, *The Frankfurt School Knew Trump Was Coming*, THE NEW YORKER, Dec. 5, 2016, <http://www.newyorker.com/culture/cultural-comment/the-frankfurt-school-knew-trump-was-coming> (describing the Frankfurt School, which anticipated the rise of authoritarianism in the United States through comparisons to German fascism). For the most brilliant and illuminating study, see HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* (1968).

<sup>24</sup> For a brilliant documentation of this phenomenon, see ARLIE RUSSELL HOCHSCHILD, *STRANGERS IN THEIR OWN LAND: ANGER AND MOURNING ON THE AMERICAN RIGHT* (2016) [hereinafter *STRANGERS IN THEIR OWN LAND*].

<sup>25</sup> MICHÈLE LAMONT, *THE DIGNITY OF WORKING MEN: MORALITY AND THE BOUNDARIES OF RACE, CLASS, AND IMMIGRATION* 34 (2000).

<sup>26</sup> See JAMES GILLIGAN, *WHY SOME POLITICIANS ARE MORE DANGEROUS THAN OTHERS* (2011) (discussing why people gravitate towards violence during republican presidencies).

<sup>27</sup> HOCHSCHILD, *supra* note 24, at 56.

themselves with them.<sup>28</sup> Trump's narcissistic rage (as a male) resonated with such men and women whereas the careful policy arguments of Clinton (as female) did not, reflecting shifts in masculinity/femininity imperatives that Clinton's candidacy embodied and that humiliate patriarchal men and women.<sup>29</sup> Trump, in fact a self-absorbed man with little record of concern for others, has been imaginatively transformed into the charismatic patriarch these already patriarchal voters desperately need or feel they need.<sup>30</sup>

The presidential election of 2016, in which gender played such a prominent role both in the candidates and in the electorate, suggests to me that that the end-game is, today, closer than Carol Gilligan and I thought in 2009 when we published *The Deepening Darkness*. Patriarchal manhood may universally be psychologically fragile and fraught, which explains why among so many peoples the initiation of men into patriarchy is so violent and its psychological consequences are male propensities to violence.<sup>31</sup> This fragility may be more apparent now than ever, as the violence of patriarchy has been more exposed and evident in the 2016 election. Patriarchy is more important in our politics than most of us thought, and its irrationalism more obvious. If we resist responsibly, its end may be close in sight. It is time to wake up to the threat of patriarchy to democracy.

## V

### FREING OF ETHICAL VOICE THROUGH RESISTANCE TO PATRIARCHY

Carol Gilligan and I argued in our book that ethical resistance—the resistance that motivates the civil rights, anti-war, second wave feminist, and gay rights movements—arises from the freeing of the ethical voice long violently repressed by patriarchy. Trump's reactionary presidential victory—like that of the other presidents who anticipated him—shows how deep the problem of patriarchy remains in American culture. Patriarchy morally injures democratic values, as the recent election—an election reflecting the Roman patriarchal strategy of divide and conquer—clearly shows. Arlie Hochschild observes that what she found in the conservatives

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<sup>28</sup> See Irin Carmon, *What Women Really Think of Men*, N.Y. TIMES (Dec. 9, 2016), [https://www.nytimes.com/2016/12/09/opinion/sunday/what-women-really-think-of-men.html?\\_r=0](https://www.nytimes.com/2016/12/09/opinion/sunday/what-women-really-think-of-men.html?_r=0).

<sup>29</sup> See ANDREW J. CHERLIN, *LABOR'S LOVE LOST: THE RISE AND FALL OF THE WORKING-CLASS FAMILY IN AMERICA* 30–34, 164–65 (2014) (discussing the masculinity imperative and hegemonic masculinity, respectively).

<sup>30</sup> For an argument that such irrationalist appeal may also exist in American business culture, see RAKESH KHURANA, *SEARCHING FOR A CORPORATE SAVIOR: THE IRRATIONAL QUEST FOR CHARISMATIC CEOs* (2002).

<sup>31</sup> See, for cogent documentation of this point, DAVID D. GILMORE, *MANHOOD IN THE MAKING: CULTURAL CONCEPTS OF MASCULINITY* (1990).

she studied was not an absence of ethics (they were often most generous to people within their communities and even beyond), but “empathy walls”<sup>32</sup> with the groups that their reactionary politics regarded as humiliating their patriarchal manhood and womanhood, an instance of how patriarchy moral injures our common sense of ethics. Martin Luther King, Jr., showed us that the way to rebut such irrationally self-destructive hatred is an ethical resistance of nonviolent and loving voice that insists on conversation about our differences and seeks to show that we have more in common than they suppose, that they have more to lose than gain, that we are, in fact, part of one ethical community.

As King put it, “I would rather die than hate you.”<sup>33</sup> Hochschild insists the human sciences cannot grapple with such “empathy walls” unless they take seriously “a full understanding of emotion in politics.”<sup>34</sup> That is why the analysis of patriarchal psychology seems to me so important and so timely, and so central to understanding of why resistance, in light of what we now know, is more needed than ever. Such ethical responsibilities are, if we are right, quite demanding—requiring us to interrogate our patriarchal traditions, including our religion, our literature, our psychology, and our law and politics. We must release not only others but also ourselves from the polarizing binaries and frozen deadness of patriarchal culture. We must free our voices, and find strength in our communities of democratic resistance, which is, I believe, what democracy is and should be, “the beloved Republic.”<sup>35</sup>

This is, I believe the legacy of *Loving*.

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<sup>32</sup> HOCHSCHILD, *supra* note 24, at 5, 233.

<sup>33</sup> DAVID A.J. RICHARDS, DISARMING MANHOOD: ROOTS OF ETHICAL RESISTANCE 173 (2005) (internal citation omitted).

<sup>34</sup> HOCHSCHILD, *supra* note 24 at 15.

<sup>35</sup> Forster, writing in 1938 when gay sex was still criminal in Great Britain, defended democracy (because of free speech), but denied it was or could be a beloved republic and “never will be.” See E.M. Forster, *What I Believe*, in TWO CHEERS FOR DEMOCRACY 69 (1938). The argument of this essay is that the legacy of *Loving* gives us reason to question Forster’s “never.” The poet Swinburne linked love and democracy: “even Love, the Beloved Republic which feeds upon Freedom and lives.” The poem is cited by the gay novelist, E.M. Forster. See Forster, WHAT I BELIEVE at 69. There is no reference in this text; the poet is, in fact, Swinburne, and the poem, *Hertha*. See Algernon Charles Swinburne, *Hertha*, in THE COMPLETE WORKS OF ALGERNON CHARLES SWINBURNE 137–45, 144 (Sir Edmund Gosse et al. eds. 1925).