ESSAY

WHAT DO WOMEN WANT: FEMINISM AND THE PROGRESSIVE INCOME TAX

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Whether an income tax ought to be progressive is one of the many issues raised by the difficult problem of defining a fair tax. The concept of a fair tax is so complex because taxation itself involves many complicated issues. There is no universal Fair Tax; rather, as Harold Groves has said: “Taxation is an art and a technique as well as a science, and it always needs to be judged against the conditions of time and place.” Accordingly, a determination of a fair tax must consider economic, philosophical, political, and practical elements. Each of these elements, of course, is multi-faceted.

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1. HAROLD GROVES, TAX PHILOSOPHERS 24 (Donald J. Curren ed., 1974).

Despite the difficulty of defining a fair tax, a progressive rate structure has been a constant feature of the income tax since 1913, when the first income tax was enacted under the Sixteenth Amendment. At that time, most of the general public, politicians and economists accepted the idea of progressivity (though they disagreed as to the appropriate rates) because it conformed to their conception of "ability to pay," which was the basis of the income tax. Support for progressivity continued, though sometimes uneasily, for decades. In the mid-1970s, however, this consensus began to disintegrate. Opposition to progressivity arose in the 1970s, grew in the 1980s, culminated in the greatly compressed rate structure found in the Tax Reform Act of 1986, and re-emerged—stronger than ever—in the 1990s.

In 1987, following the passage of the 1986 Act, I published an article in the Michigan Law Review entitled The Rhetoric of the Anti-Progressive Income Tax Movement: A Typical Male Reaction. The article considered traditional arguments for and against progressivity and examined the rhetoric accompanying opposition to progressivity, as well as the individualistic philosophy underpinning it. It suggested that alternative philosophies or visions of society could provide un-

3. The first federal income tax in the United States was enacted in August 1861. See Act of August 5, 1861, ch. 45 § 49, 12 Stat. 292, 309. In July 1862 Congress repealed the Act before it was effective, and replaced it with another. The 1862 Act was slightly graduated, with a 35% tax rate on incomes between $601 and $10,000 and a 55% tax rate on incomes above $10,000. See Act of July 1, 1862, ch. 119, § 90, 12 Stat. 432, 473 (1862).


6. See POLLACK, supra note 5, at 78-115 (describing emotional debates over tax equity in context of the 1975 tax bill and President Carter's tax proposal of 1977, as well as proposed tax reforms in the 1980s and growing congressional concern about progressive taxation).


8. See id. at 474 (identifying equity as many proponents' ultimate goal); id. at 471-72 (describing traditional critique of progressivity for increasing complexity of tax laws, promoting economic inefficiency and political irresponsibility); id. at 486 (criticizing opponents' rhetoric for confusing tax debate by obscuring underlying premises of economic arguments); id. at 469 (characterizing philosophical opposition as being based on belief in primacy of individual and individual rights).
derlying support for progressivity and described a feminist "ethos of care" as an example of such support.9

Recently, William Turnier, Pamela Johnston Conover and David Lowery undertook an empirical study (hereinafter the "Turnier study") to test whether the feminine voice, and in particular an ethos of care, actually supports progressive taxation. In an article published in The American University Law Review entitled Redistributive Justice and Cultural Feminism,10 they concluded that support for progressive taxation among women exceeds that among men by only "a very narrow margin."11 As a result of this alleged contradiction between their empirical findings and the theoretical claims, they argued that research should focus on empirical studies rather than theory.12

Are these two articles contradictory, and if so, which article is correct? Do women support progressive taxation? How do we prove (or disprove) it? Has the Turnier study proved that women do not support progressivity significantly more than men? Have they, therefore, discredited the feminist ethos of care and the role of theory?

This brief rejoinder explains why the Turnier study fails to disprove feminist theoretical claims concerning progressivity. Even if the study did disprove these claims, however, the value of theory still remains.

The Turnier study attempts to measure empirically the correlation between gender and feminism (particularly, cultural feminism)13 and redistributive justice, as illustrated by attitudes about social spending and tax fairness. I will focus on tax fairness. Although Turnier, Conover and Lowery expected to find that women were more supportive of progressive taxation than men, they were surprised to find only a "very weak" positive correlation between feminist identification and tax fairness.14 They concluded, therefore, that their study "did not bear out the dramatic claims made by proponents of cultural feminist jurisprudence regarding the potential impact" of gen-

9. See id. at 507-10 (describing an "ethos of care" as a perception of one's interconnectedness with, and responsibility to, others). Other community-oriented visions of society include various religious and political-based communities such as the Oneida community and theories such as republicanism. See id. at 505-06.
11. Id. at 1312.
12. See id. at 1315-17.
13. See id. at 1279-82. The authors base their description of cultural feminism on Carol Gilligan's theory that women speak in a different voice than men. According to Gilligan, men define themselves as separate from others and speak from an "ethos of rights," whereas women define themselves through connectedness to others and speak from an "ethos of care." They do not, however, define the ethos of care in any detail.
14. See id. at 1312.
der and the ethos of care for changing substantive law. Consequently, they urged scholars to shift their attention from feminist theory to empirical studies because “[t]o allow theorists, regardless of their good intentions, to articulate their version of the message of previously excluded voices is merely to substitute a new form of dominance for an old one. It is far more preferable to allow all excluded components to speak for themselves.”

This dismissal of theory and exaltation of empirical studies is unwarranted. To maintain that a multiple choice poll allows “excluded components” to speak for themselves is extremely optimistic, at best, given the many known difficulties of such polls. Moreover, the Turnier study does not disprove feminists’ claims because the study is flawed. Finally, even if the study empirically had disproved the claims, it would not invalidate the worth of feminist jurisprudence.

There are two major flaws in the study design, the use of a two factor tax fairness index as a measure of tax fairness and the method of identifying feminists. Tax fairness and feminist identification are difficult issues to address in a survey; perhaps any methodology would be flawed. Nevertheless, the resultant flaws must be scrutinized to determine whether the study disproves its hypothesis.

The issue of tax fairness is indisputably difficult to address, especially in a survey. Polls have many problems, such as sampling issues, and extreme language sensitivity. How a question is phrased (e.g., in the negative or the positive; in the abstract or the specific), as well as the order in which questions appear, can greatly affect the response. Tax attitudes are particularly sensitive to language because most people have little knowledge of tax matters. For example, a recent poll showed that many people believed that the Clinton administration enacted a value-added tax. Another problem is that much of what people believe is conveyed by the media. For example, the media stresses marginal rates rather than effective rates. Thus, people

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15. See id. at 1305-06.
16. Id. at 1317-18.
17. See, e.g., Randolph E. Schmid, Census Feeling Out Multi-Racial Option, TIMES-PICAYUNE, May 16, 1997, at A15 (reporting that more people answer a question concerning whether a person is of Hispanic origin if it is asked before a question on race).
18. See Clay Chandler, Will the Republicans Trip Over Tax Reform?, WASH. POST, Aug. 13, 1995, at H1 (revealing polling data showing that nearly seven in ten respondents had not “heard or read anything” about a flat tax and suggesting that public response to flat tax depended largely on the manner in which the issue was phrased in recent surveys). Another problem in surveys on taxation is the fact that almost everyone hates to pay taxes, which raises a host of psychological issues. See JOSHUA D. ROSENBERG, THE PSYCHOLOGY OF TAXES: WHY THEY DRIVE US CRAZY, AND HOW WE CAN MAKE THEM SANE 155 (1996).
are more aware of the highest tax rate that they pay only on their last dollars of income than they are of the average or effective tax rate paid on all their income. The complex relation between a person's conception of distributive justice and actual distributions creates another difficulty. There is a large, unsettled debate in sociological literature about whether our normative beliefs affect our perceptions of reality and how accurate our perceptions of reality are. In short, the complexity of the tax fairness issue combined with the natural limitations of surveys makes it difficult for a multiple choice poll to capture completely respondents' true attitudes.

Given all the difficulties of polling—especially with regard to issues of taxation—any questions asked would be open to some criticism. The two factor tax fairness index used by the Turnier study is particularly suspect. The index consists of two issues "that have figured prominently during the past few decades in national debates regarding tax issues, the progressive tax system and the preferential treatment of capital gains." The authors chose this index because my progressivity article purportedly implied that there was only "a single dimension underlying tax fairness issues." I do not think that I made any such implied assertion. Even if I had implied a single concept that translated into a tax fairness index that includes capital

20. See Michael L. Roberts & Peggy A. Hite, Progressive Taxation, Fairness, and Compliance, 16 Law & Pol'y 27, 40-42 (1994) (showing that the typical citizen will pick as a fair tax rate a figure close to statutory marginal rates but will choose a dollar amount closer to the current effective or average rate).

21. See, e.g., ALAN LEWIS, THE PSYCHOLOGY OF TAXATION (1982); Davenport, supra note 19, at 321 (citing an opinion poll that showed many people erroneously believed that the Clinton administration enacted a value-added tax); Edward J. McCaffery, Cognitive Theory and Tax, 41 UCLA L. Rev. 1861, 1873 (1994).

22. Turnier et al., supra note 10, at 1301.

23. Id. at 1302. In note 155 the authors say: "We analyzed the two factor tax fairness index given Kornhauser's implied assertion that there is a single dimension underlying tax fairness issues. See Kornhauser, supra note 7, at 468-69 (suggesting that two principle arguments underlying objection to progressive tax as being unfair—'market efficiency' and philosophy of 'individualism'—are so closely related as to actually be one concept)." What I actually said on those quoted pages is: "Underlying and shaping the current objections [to progressivity] are the neoclassical economic arguments of market efficiency, and the philosophic premises of individualism based on concomitant beliefs in the primacy of individual property rights and a government with limited functions." See id. (internal citations omitted).

24. Neither my quoted words nor the article necessarily leads to the inference drawn by the Turnier study. Certainly my article stated that the concepts of market efficiency and individualism are connected—one supports the other. That statement, however, is a far cry from saying that there is one single dimension underlying tax fairness. Although the article showed that the market efficiency arguments rested on philosophic premises, and not on neutral scientific findings, the article did not—and never attempted to—deny that economic efficiency had any valuable role in taxation. I was not trying to destroy the argument, only its privileged position based on objectivity. A feminist ethos of care does not have to ignore economic efficiency arguments, it just would not privilege them. See id. at 488 (explaining that economic models should not be an instrument for policy formation because of the assumptions present in "scientific methodology").
gains,\textsuperscript{25} however, such an index would not be an accurate polling device for determining the public's ideas regarding tax fairness. Public finance scholars and other financially knowledgeable individuals may understand the correlation between redistributive justice and capital gains. It is unlikely, however, that the average person would recognize it because he is generally fiscally unsophisticated, unaware of tax issues, or views them through a distorted cognitive lens. Consequently, most feminists, like most other people, would be unlikely to recognize any connection between an ethos of care and capital gains preferences, or even between progressivity and capital gains. This is especially true because there is nothing obvious in the issues (or the wording of the questions) used in the Turnier study to connect capital gains to progressivity, let alone to an ethos of care. It is not surprising, then, that the authors found only a "weak correlation" between capital gains and progressivity.\textsuperscript{26} It is the academic connection that led to the inclusion of the capital gains question in the index.

Just as troublesome as the index is the methodology used to identify those respondents who are feminists. The authors attached a feminist label to all subjects who identified themselves as such.\textsuperscript{27} Self-identification is an easily quantifiable technique for a poll to use, but it is always subject to great inaccuracies. People frequently tell interviewers what they think the interviewers want to hear.\textsuperscript{28} Sometimes people honestly say they believe one thing, but in fact do another.\textsuperscript{29} Self-identification as a feminist is particularly open to distortion because of negative connotations attached to the label,\textsuperscript{30} which are

\textsuperscript{25} Even if I did imply a single concept, that does not necessarily translate into a tax fairness index that includes capital gain. Arguably, there could be an economic argument strong enough to support a capital gains deduction while still satisfying progressivity by adjusting the rest of the rates.

\textsuperscript{26} See Turnier et al., supra note 10, at 1312.

\textsuperscript{27} See id. at 1302-03 n.157. Initially, the authors included other questions in addition to self-identification to determine whether the respondent was a feminist. The questions concerned whether the respondent was proud of women's accomplishments. They eliminated these questions from their "feminist" label because many subjects did not answer them, thus reducing the sample size. See id. This illustrates the problem of self-identification, which the authors acknowledged. Nevertheless, they used this as their sole method to identify feminists.

\textsuperscript{28} See LEWIS, supra note 21, at 47 (describing how respondents' replies in surveys and polls are often manipulated). "[R]espondents look for guidance to the interviewers and questions as to what their answers ought to be. Very few of us have the tenacity to admit our ignorance in public, especially about things we feel we ought to know about." Id. at 48-49.


\textsuperscript{30} See Cheryl B. Preston, This Old House: A Blueprint for Constructive Feminism, 83 GEO. L.J. 2271, 2284-89 (1995) (discussing the meaning of the word 'feminism' as expressed by college students in personal journal entries). One student wrote "Feminism": Angry, obnoxious, disrespectful, insulting, shrill, unladylike, ungraceful, disgraceful, anti-, anti-, (always) anti-, fanatic, deluded, etc. These are some of the words that come to mind when I think of the word
largely a product of media treatment. 31 Probably all of us have heard women say, "I'm not a feminist, but . . . ." 32 What follows the 'but' may be a variety of statements regarding such things as equal rights, equal pay and equal respect. In other words, many women reject the label, but hold feminist beliefs. 33 Given this phenomenon, self-identification of feminists would omit many people who hold feminist beliefs. Those who did identify themselves as feminists, however, might be assumed to be strongly feminist. This is not necessarily true. Self-identification does not necessarily correlate with the strength of belief held. A host of complex sociological, psychological, and even political reasons is needed to explain why some people identify themselves as feminists and others do not.

Even if it were true that only those holding strong feminist beliefs identified themselves as feminists, this would not necessarily translate into a strong positive response to the tax fairness index, for all the procedural reasons—including the difficulties of polling in general, and this poll in particular—previously discussed. 34 Feminists might respond very differently to questions that have only slight differences in phrasing. 35 For example, people are more likely to support a tax if they know what benefits the tax revenues will provide. 36 It is conceivable that a question that tied the progressivity to this social spending would produce a higher correlation between progressivity and feminism than the Turnier study demonstrated with its questions.

Given the difficulties of the Turnier study, as well as empirical studies in general, the authors' study does not disprove a correlation between an ethos of care and progressivity. Even if such negative proof were to exist in an ideal, problem-free poll, however, it would not necessarily disprove the correlation for all situations or discount the

32. See Claudia Wallis, Onward, Women!, TIME, Dec. 4, 1989, at 80 (discussing the "No, but . . . ." generation of women who reject the feminist label). Thomas Petzinger, Jr. quotes a woman complaining about being patronized in the workplace as saying, "I am not a women's libber and never will be. . . . I just wanted to be taken seriously." Thomas Petzinger, Jr., The Front Line, WALL ST. J., May 16, 1997, at B1. Isn't being 'taken seriously' the essence of the feminism she disdains?
33. See Preston, supra note 30, at 2287 n.55 (describing the consequences of feminism's negative connotation on surveys).
34. See Kornhauser, supra note 2, at 643 (discussing the drawbacks of open-ended or multiple-choice questions); see also supra notes 23-26 and accompanying text.
35. See Preston, supra note 30, at 2287 n.55 (explaining disparate effect obtained by surveys that omitted the word "feminist").
36. See LEWIS, supra note 21, at 40 (stating that support for tax system increases when questions mention its benefits).
value of feminist theory. To abandon theory for empirical studies, even to privilege studies, \textsuperscript{37} is to allow a useful but far from perfect tool to impose its own tyranny—the very thing the authors accuse theory of doing.\textsuperscript{38}

From a practical standpoint, both people and the topic of progressivity and taxation are too complex for a multiple choice poll to capture in reality. Certainly, polls can produce quantifiable results that look unambiguous, but such an appearance merely hides the messier truth. Although it is possible for a person to hold an ethos of care yet not support progressivity,\textsuperscript{39} polls easily can find too many such persons, too many false negatives, as it were, for several reasons.

First, a finding that women do not favor progressivity does not necessarily contradict a connection between progressivity and an ethos of care because that ethos does not support such a connection in all situations. Turnier never discusses the finer details of an ethos of care, speaking only generally about webs of relationships and communities.\textsuperscript{40} These relationships and communities, however, are

\textsuperscript{37} See Turnier et al., \textit{supra} note 10, at 1316-17 (concluding that feminist theory has little effect on the development of attitudes towards redistributive justice and that empirical studies, rather than theory, are more valid indicators of the true opinions and interests of constituents).

\textsuperscript{38} See id. at 1317-18 (maintaining that it is preferable to allow all excluded voices to express their own views and opinions rather than listening to theorists articulate the views of the excluded group).

\textsuperscript{39} See Kornhauser, \textit{supra} note 7, at 470 (concluding that an ethos of care provides a philosophic rationale for a progressive tax but does not compel progressivity). The general tenor of my progressivity article spoke in terms of support. \textit{See id.} One sentence, however, did state that, "[o]ther views of humanity, such as the feminist vision, see people as interrelated and therefore support and even mandate some progressivity." \textit{Id.} at 518. Despite this sentence, most scholars correctly interpreted the article in light of its general tenor and cite it for the view that an ethos of care supports progressivity. \textit{See}, e.g., Carrie Menkel-Meadow, \textit{Mainstreaming Feminist Legal Theory}, 23 PAC. L.J. 1493, 1531 (1992) (observing that feminist theory may offer justification for a progressive tax system); Nancy C. Staudt, \textit{Taxing Housework}, 84 GEO. L.J. 1571, 1628 n.246 (1996) (maintaining that the feminist perspective supports progressive taxation); G. Marc Worthy, Note, \textit{An Examination of Tax Law and Supply Side Economics: Creed of Greed or Opportunity for All}, 72 N.D. L. REV. 691, 691 (1996) (noting that the debate over taxation includes radically different perspectives supporting progressive taxation). The Turnier study correctly notes my use of the word "mandate," but states alternatively that I claim the ethos of care supports progressivity or mandates it. \textit{See} Turnier et al., \textit{supra} note 10, at 1292.

My use of the word "mandate" was injudicious. I am only claiming that an ethos of care provides an underlying philosophic justification for progressivity. A person could believe in an ethos of care and satisfy it through means other than a progressive tax system, such as voluntary contributions of time, money or goods to the less fortunate. Consequently, an ethos of care does not mandate progressivity, but would be logically more likely to support a progressive tax than other, more individualistic, philosophies. \textit{See} Alice G. Abreu, \textit{Taxes, Power, and Personal Autonomy}, 33 SAN DIEGO L. REV. 1, 77 n.148 (1996) (finding theory that feminist values support progressivity persuasive).

\textsuperscript{40} See Turnier et al., \textit{supra} note 10, at 1279-85 (discussing the cultural feminist perspective, which asserts that decisions and choices based on an ethos of care emphasize care and enhances the connectedness of other individuals within a community). This view lies in contrast to the ethos of rights approach, which focuses on the individual. \textit{See} Carol Gilligan, \textit{In a Different Voice: Psychological Theory and Women's Development} 7-8 (1982).
not undifferentiated. An ethos of care does not mandate that a person must care for everyone equally; rather, there are levels of care based on the relationship between the caregiver and the cared-for; the closer the relationship, the greater the caregiver’s duty of care. Although there is a duty of care to a stranger, it is a minimal duty that does not require great sacrifice. A progressive income tax may be a relatively non-burdensome way to fulfill our minimal obligations to strangers because it does not require a person to sacrifice time or effort that a closer relationship or web would require. As a consequence, a person may believe in an ethos of care and maintain that a progressive tax is a way to perform her minimal duty of care to strangers. If she already feels so overburdened that she cannot fulfill her greater obligations to her family, however, then even under an ethos of care she would not have any obligation to help strangers. Thus, her negative answers to polling questions about progressive taxation might reflect her current unpleasant reality, rather than any theoretical beliefs in an ethos of care or progressivity.

Second, people can and do hold contradictory beliefs at the same time. Views and actions on particular issues do not always coincide with peoples’ general overall philosophy. Sometimes this occurs because they do not realize that a particular belief or action implicates—let alone conflicts with—a different belief. This is particularly true with regard to a sophisticated, yet emotionally-charged topic like taxation. Given more information, people may change their views so that they are more consistent. On certain issues, however, two contradictory beliefs held with equal intensity may coexist, although perhaps uneasily. Again, taxation is a subject where this easily can happen because money and taxation involve many complex beliefs about society, justice and the role of government. Americans are indeed ambivalent about wealth and taxation. The interaction of this ambivalence with cultural feminist beliefs surely is more complex than a simple multiple choice survey can reveal.

41. See NEL NODDINGS, CARING: A FEMININE APPROACH TO ETHICS AND MORAL EDUCATION 46 (1984) (explaining that “concentric circles of caring,” based on proximity of relationships, define limits and degrees of care expected of the individual towards others in the community); Kornhauser, supra note 7, at 509-11 (asserting that people maintain higher levels of care and obligation to family members and close friends than to strangers).

42. See Jane S. Schacter, The Gay Civil Rights Debate in the States: Decoding the Discourse of Equivalents, 29 HARV. C.R.-C.L. L. REV. 283, 301 (1994) (illustrating polling disparities that show a large majority of Americans support equal job opportunities for gays and lesbians, but demonstrate that only a minority favors the extension of civil rights laws to cover sexual orientation).

The authors' belief that empirical studies are more valuable than feminist theory is wrong because it seems to misunderstand the nature of knowledge and truth, and therefore misunderstands the relationship between theory and empiricism. The authors' faith in scientific objectivity appears to exclude other methods of knowledge. Science, however, is not the only truth, nor even an absolute truth; rather, like all areas of human knowledge, it is tentative and evolving.44

Even physics, the paradigm of objective science, cannot be totally separated from the larger world. Science is not, and can never be, totally detached from and uninfluenced by the world which it studies. Computers may produce and "read" long formulas, but only interpretation gives them meaning. That interpretation is created by culture. As Sandra Harding has stated:

The formula “1 + 1 = 2” is meaningless unless we are told what is to count as a case of 1, of =, and so on. The history of chemistry can be understood in part as the struggle to determine what should count as the 1’s, the +’s, and the =’s of chemical “addition.” And it is not just in physics and chemistry that the appropriate meanings and referents for such apparently obvious terms are debated. As a famous physicist is alleged to have remarked, if we put one lion and one rabbit in a cage, we rarely find two animals there one hour later! Scientific formulas are like legal judgments: the laws become meaningful only through learning (or deciding) how to apply them, and doing so is a process of social interpretation.45

There are many forms of knowledge and many ways of persuading others of their value. Science is not always the best method. As the economist D.N. McCloskey stated:

Not all regression analyses are more persuasive than all moral arguments; not all controlled experiments are more persuasive than all introspections.

. . . .

It may be claimed in reply, and often is, that people can agree on precisely what a regression coefficient means but cannot agree precisely on the character of their introspection. This is false: people can converse on the character of their introspections, and do so habitually about their aesthetic reactions, say, to a painting by

44. See D.N. McCloskey, The Rhetoric of Economics 32-34 (1985) (remarking that "mathematicians do not 'prove' theorems for ever and ever," but only "temporarily satisfy their interlocutors in a conversation"). This evolutionary nature of science is self-evident when we consider some of the scientific truths that we have discarded: the sun revolves around the earth, the earth is flat, illness results from an imbalance of the four bodily humors (blood, phlegm, yellow bile, black bile).
Brueghel or a theory by Lucas. The conversations often reach conclusions as precise as human talk can. But even if it were true that regression is more precise, this would not be a good argument for economists to abandon introspection in economics. Introspections, even if imprecise, can be better than regression estimates infected with misspecifications and errors in the variables. That the regression uses numbers, precise as they look, is irrelevant. To speak precisely, precision means low variance of estimation; but if the estimate is greatly biased, it will tell precisely nothing.1

Theory and empiricism are not opposites, but rather are engaged in a joint enterprise. Theory shapes the questions that empiricists ask; the data they find gains meaning only when it is interpreted, and that occurs only through theory. Feminists can also be empiricists; all empiricists use theory. Our knowledge advances through a dialogue between theory and empiricism. Thus, the value of theory, in general, exceeds any particular empirical proof (or lack thereof) because it is an essential element of a dialectical quest for knowledge.

Feminist theory, like other "outsider" theories, is particularly worthwhile because it is another way of viewing the world, perceiving truth, and convincing others of it. Outsider theories make us re-examine purportedly self-evident truths.46 The outsider critique may reveal that what we thought was an inevitable result or institution or perhaps a neutral principle rests on unexamined premises that do not necessarily hold true, and in reality are not true for all affected people. Even if a particular theory ultimately proves incapable of empirical verification in a particular area, its highest value may be that we never look at that area the same way again. By forcing us to examine the previously unexamined, a feminist critique, like any

46. MCCLOSKEY, supra note 44, at 44-45. More bluntly, Professor McCloskey says that, contrary to positive economists' claims that the science's techniques of logic and measurement are "high scholarly standards...[p]ositive economics urges economists to stick with the easy arguments. My regression coefficients are significant at the .01 level: don't bother me with ethics, analogy, testimony, or intellectual tradition." D.N. McCloskey, The Rhetoric of Law and Economics, 86 MICH. L. REV. 752, 765 (1988).

47. Although early feminist scholarship concentrated on qualitative studies, many current feminist scholars now engage in statistical analysis and try to integrate quantitative and qualitative studies. See, e.g., Interview with Tulane University Professor April Brayfield, a sociologist specializing in gender issues, in New Orleans, La. (Jan. 28, 1997) (on file with author).


49. See Matsuda, supra note 48, at 2325-26; Ann Scales, Feminist Legal Method: Not So Scary, 2 UCLA WOMEN'S L.J. 1, 23 (1992) ("Feminist method unlocks objective reality and posits alternative claims to truth...".)
other outsider critique, forever changes us and our view of the world.50

So, what do women want? Has my analysis or the Turnier study succeeded in finding an answer (at least regarding progressivity) where even Freud has failed? Yes and no. I have suggested that a feminist ethos of care provides a basis to support a progressive income tax. The Turnier study's initial empirical test of the theory finds weak support, but fails to disprove the theory due to inherent weaknesses in polling methods generally and their poll in particular. Other empirical methods, such as open ended interviews or controlled experiments, might overcome the disadvantages of the polling method, but possess their own shortcomings.51 No study can fully capture the complexity of the issues involved. A study can, however, produce data. This data by itself does not produce knowledge. However, when it is evaluated and interpreted (acts which must occur in a theoretical context), it improves our understanding, which then allows us to refine our theories which in turn may lead to more accurate studies. Thus, we cannot take the theory out of science; science is inexorably connected to theory.

All theory, however, is not so linked to science. Certain theories cannot be empirically tested, but they are not intrinsically less valuable than those that can be. Knowledge comes in many forms; there are, for example, moral, religious, spiritual, and aesthetic truths as well as scientific ones. Knowledge and truth are frequently found in strange and unsuspected places. We find them, for example, in dreams,52 children,53 old wives tales,54 and accidents.55 Even a flawed


51. The Turnier study's closed universe (multiple choice) poll has the advantage of easily quantifiable responses. Its disadvantage, however, is that its format easily distorts answers and fails to capture complex attitudes. Open-ended interviews may more accurately reflect the respondents' views but are harder to quantify, involve a smaller sample, and still contain bias created by the interviewer-interviewee interaction. See Kornhauser, supra note 2, at 643 (illustrating drawbacks of open-ended and multiple choice questions). Controlled experiments create their own distortions by the mere fact that their simplified environment cannot reflect all the complexities of real life.

52. Many cultures for many ages have found great truths in dreams. Freud, of course, wrote the classic Interpretation of Dreams. SIGMUND FREUD, INTERPRETATION OF DREAMS (1900). The structure of the benzene molecule was discovered by Friedrich August Kekule von Stradonitz who allegedly solved the puzzle of the molecular structure in a dream in which he saw a circle of snakes each holding the tail of another in its mouth.

53. It was, after all, a child who saw that the emperor wore no clothes.

54. Long before science 'proved' certain facts, mothers knew that a glass of hot milk will make you sleepy (tryptophan produces serotonin) and that broccoli is good for you (the antioxidants fight cancer).

55. Penicillin was discovered in 1928 by Alexander Fleming who found that a mold grow-
and non-empirically testable theory can contain truth. Consequently, searching for knowledge and truth only—or even primarily—through empirical study unnecessarily cripples the search and constrains its chance of success. Theory and empiricism both advance us in our quest for truth and knowledge. Therefore, the best way to search for them is by “letting a hundred flowers bloom and a hundred schools of thought contend,” as Mao Tse-Tung, the purveyor of a notoriously flawed and non-empirically testable theory, once said.56

56. QUOTATIONS FROM CHAIRMAN MAO TSE-TUNG 302-03 (1966) (the infamous ‘Little Red Book’). Mao, of course, did not practice his theory.