

REDISTRIBUTIVE JUSTICE AND CULTURAL FEMINISM

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INTRODUCTION

The year 1982 saw the publication of Carol Gilligan's *In a Different Voice*.¹ In general, Gilligan, drawing on her own work and that of others, undertook to establish that differences in the approaches of men and women to moral and social structuring issues are based on a different way of approaching ethical and social issues.² She found that males emphasize the autonomy of individuals and an ethos of rights in their approach, whereas females emphasize communitarian values and an ethos of care.³ Gilligan labeled neither approach as superior. Each provided useful, but different, modes for resolving moral and social issues.⁴

Some legal scholars seized upon Gilligan's work as providing justification for creating new modes for evaluating existing legal rules and creating new rules.⁵ These scholars, who are sometimes grouped

1. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

2. *See id.* at 1-23.

3. *Id.* at 73, 100.

4. *Id.* at 167-74.

5. *See, e.g.*, Leslie Bender, *Changing the Values in Tort Law*, 25 TULSA L.J. 759, 767-73 (1990) [hereinafter Bender, *Changing the Values*] (stating that Gilligan's work can help alter moral vocabulary of tort law by changing meaning of word "responsibility" in law); Leslie Bender, *Feminist (Re)torts: Thoughts on the Liability Crisis, Mass Torts, Power and Responsibilities*, 1990 DUKE L.J. 849, 895-96, 901-08 [hereinafter Bender, *Feminist (Re)torts*] (stating that woman's different voice, as applied to tort law, would improve system by making legal responsibility more multi-dimensional); Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 4, 28-37 (1988) [hereinafter Bender, *A Lawyer's Primer*] (presenting major components of feminist theory and illustrating how they can be used to critique tort law); Kenneth L. Karst, *Woman's Constitution*, 1984 DUKE L.J. 447, 461-63 (describing Gilligan's analysis of female approach to relationships as "web of connection" and proposing that application of web theory to constitutional law will yield greater protections under U.S. Constitution); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39, 41-63 (1985) [hereinafter Menkel-Meadow, *Portia*] (proposing that scholars must analyze lawyering by using Gilligan's observations of differences in male-female moral reasoning now that there are more women in formerly male-dominated legal profession); Judith Areen, *A Need for Caring*, 86 MICH. L. REV. 1067, 1073-78 (1988) (book review) (applying care perspective to battle against AIDS). For a more extensive presentation of scholarship based on Gilligan's work, see KATHARINE T. BARTLETT, *GENDER AND LAW* 589-670 (1993) and Leslie Bender, *From Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law*, 15 VT. L. REV. 1, 1-2 n.2 (1990).

together under the label of the "cultural feminist school" of jurisprudence,⁶ claim that the existing legal construct, which was largely the product of a male-dominated society, is preoccupied with individual autonomy and an ethos of rights.⁷ Basing legal rules on communitarian values and an ethos of care would result in the making of dramatically different choices. These scholars assert that basing a jurisprudence on an ethos of care, rather than an ethos of rights, will result in different legal rules governing issues such as negligence,⁸ racial discrimination,⁹ rights of AIDS victims,¹⁰ and the distributive impact of taxation.¹¹ Unlike Gilligan, cultural feminists often see the ethos of care as superior to the ethos of rights and see the changes that would be wrought in the legal system by application of the ethos of care as improvements on the present state of the law.¹²

The purpose of this Article is to test, in the context of redistributive justice,¹³ the basic postulate of cultural feminist jurisprudence—that men and women approach major societal issues differently so that were we to listen to woman's different voice, different choices would

6. See Patricia A. Cain, *Feminism and the Limits of Equality*, 24 GA. L. REV. 803, 835-38 (1990) (describing cultural feminists as those feminists who focus on women's differences from men and embrace idea that "woman's different voice" is "good").

7. See, e.g., Bender, *Changing the Values*, *supra* note 5, at 767 (stating that current tort law concerns only fiscal responsibility and not responsibility of taking care of others); Bender, *Feminist (Re)torts*, *supra* note 5, at 903-04 (concluding that because tort law was created by men, ethic of rights dominates field); Bender, *A Lawyer's Primer*, *supra* note 5, at 31-32 (noting that tort law is premised on rights and separation rather than responsibility and interconnectedness); Karst, *supra* note 5, at 462 (recognizing that American law is predominately abstract hierarchy of rights rather than web of interconnectedness); Suzanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 VA. L. REV. 543, 544-45 (1986) (stating that modern paradigm of political and moral philosophy is individualistic); Areen, *supra* note 5, at 1072-78 (arguing that society should not punish transmission of AIDS, but should approach problem from caring point of view).

8. See Bender, *A Lawyer's Primer*, *supra* note 5, at 32 (proposing that under care perspective, duty of care required by negligence would mean "acting responsibly towards others to avoid harm, with a concern about the human consequences of our acts or failures to act").

9. See Karst, *supra* note 5, at 491-93 (stating that care approach to racial discrimination cases will result in abandonment of "state action" doctrine).

10. See Areen, *supra* note 5, at 1079-80 (concluding that if care perspective were applied to issues surrounding AIDS, people without HIV would care for those with HIV and would assist with screening and education programs, but that application of justice perspective ignores necessity of care for HIV infected individuals).

11. See Marjorie Kornhauser, *The Rhetoric of the Anti-Progressive Income Tax Movement: A Typical Male Reaction*, 86 MICH. L. REV. 465, 507-23 (1987) (concluding that care perspective supports progressive income taxation because female view emphasizes relatedness to others and progressive tax is "means by which individuals fulfill their responsibilities to others").

12. See *infra* notes 21-75 and accompanying text.

13. By redistributive justice we mean those processes whereby resources are transferred from those who have them in abundance to provide for the social and economic needs of those with scant resources. In our society, this is most commonly achieved with a combination of progressive tax measures and public spending programs which disproportionately provide for the needs of those with minimal resources.

be made about legal solutions to social problems. To this end, we employed conventional polling techniques and statistical analysis to determine if there are significant gender-based differences in the degree of support for a number of redistributive justice issues. We chose to test support for redistributive justice because, if the cultural feminists are correct, the combined effect of the female-oriented ethos of care with its emphasis on communitarianism and the male-oriented ethos of rights with its emphasis on individuality should result in women being dramatically more supportive than men of progressive tax measures and of social spending measures that benefit the disadvantaged and the effectively disenfranchised. We selected for our study two tax and six spending issues that we believed were politically typical and were good reflections of an individual's position on redistributive justice.

If, as cultural legal feminists claim, men, in their approach to moral issues, favor an ethos of individual rights and justice, and women favor a communitarian ethos of care, and if these different perspectives can be expected to translate into different choices about legal rules and programs for addressing social problems, we believe that this should reveal itself in different levels of support by men and women for programs that address redistributive justice issues. This Article first provides a general review of the schools of feminist jurisprudence: (1) cultural feminism; (2) liberal feminism; (3) radical feminism; and (4) post-modern feminism. Following is a discussion of the methodology that we employed in gathering the data for our analysis. Next, we set forth our general conclusion followed by a detailed analysis of the data by first focusing on social spending and then on tax fairness issues. Following is a more detailed statement of our conclusions and an appendix, which provides, in technical format, the data we developed.

The data that we developed and our analysis of it provide no support for concluding that the differences between males and females observed by Gilligan will, if we favor one voice over another, translate into different choices being made by society in resolving issues of redistributive justice.

I. SCHOOLS OF FEMINIST JURISPRUDENCE

Any attempt to classify the various ways that feminists theorize about legal issues is bound to be subject to criticism. Rather than being monochrome, much feminist scholarship resembles a painting where the artist has made use of a number of the colors on the pallet to provide us with her work of art. Nonetheless, for purposes of

simplifying the discussion, it is useful to identify the four major schools of American feminist jurisprudence.

Although various scholars employ different labels in characterizing the different schools of feminist jurisprudence, for purposes of this Article we accept the four classifications that Professor Patricia Cain has established: (1) cultural feminism; (2) liberal feminism; (3) radical feminism; and (4) post-modern feminism.¹⁴

Because cultural feminism posits that gender alone can account for the different approaches made by men and women as solutions to social problems, we believed that it was possible to test empirically the cultural feminist postulate by employing conventional polling techniques and statistical analysis. In our discussion of the various schools of feminist jurisprudence we focus first on cultural (or relational) feminism since it is central to our inquiry. We then consider briefly the other schools of feminist jurisprudence before presenting our empirical analysis.

A. Cultural Feminism

The cultural feminist movement is principally based on the work of Professor Carol Gilligan, an educational psychologist at Harvard.¹⁵ Professor Lawrence Kohlberg, an educational psychologist at Harvard and Gilligan's one-time collaborator, established a theory and scale of cognitive moral development under which men generally outperformed women.¹⁶ According to Kohlberg, individuals who reach full moral maturity pass through six distinct stages of moral development.¹⁷ In the first two stages, moral judgment is based on an

14. Cain, *supra* note 6, at 829-41.

15. See Cain, *supra* note 6, at 835-41.

16. See Lawrence Kohlberg, *Moral Stages and Moralization: The Cognitive-Development Approach*, in *MORAL DEVELOPMENT AND BEHAVIOR: THEORY, RESEARCH AND SOCIAL ISSUES* 31, 31-53 (Thomas Lickona ed., 1976) [hereinafter Kohlberg, *Moral Stages*] (describing six stages of moral development). For additional works by Kohlberg on this subject, see LAWRENCE KOHLBERG, *THE PHILOSOPHY OF MORAL DEVELOPMENT: MORAL STAGES AND THE IDEA OF JUSTICE* (1981) (using six stages of moral development to appraise problems of education, philosophy, moral philosophy, and humanities); Lawrence Kohlberg, *Continuities in Childhood and Adult Moral Development Revisited*, in *LIFE-SPAN DEVELOPMENTAL PSYCHOLOGY: PERSONALITY AND SOCIALIZATION* 179, 179-204 (Paul B. Baltes & K. Warner Schaie eds., 1973) (addressing question of existence of adult stages and change in stages throughout moral development); Lawrence Kohlberg, *The Development of Moral Judgment and Moral Action*, in *CHILD PSYCHOLOGY AND CHILDHOOD EDUCATION: A COGNITIVE-DEVELOPMENTAL VIEW* 259 (1987) (reviewing findings on development of moral judgment and moral character necessary for informed concern for moral education); Lawrence Kohlberg, *Stage and Sequence: The Cognitive-Development Approach to Socialization*, in *HANDBOOK OF SOCIALIZATION THEORY AND RESEARCH* 342, 347-480 (David A. Goslin ed., 1971) (applying six stages of cognitive-development to phenomenon of moral socialization and considering processes of imitation and identification from this perspective).

17. Kohlberg, *Moral Stages*, *supra* note 16, at 31-33.

individual's own understanding of that individual's wants and needs.¹⁸ Persons who advance beyond this will come to realize that social normative values, and not personal wants and needs, are what should constrain and compel their conduct.¹⁹ Those who reach the two highest levels of moral development, according to Kohlberg, critically evaluate accepted social norms and form moral judgments based on abstract concepts of moral right.²⁰ Studies conducted using Kohlberg's scale indicated that men tended to advance further than women toward full moral maturity.²¹

Gilligan eventually undertook to challenge Kohlberg's work.²² The principal result of her endeavor was her already mentioned work, *In a Different Voice*, wherein she challenged Kohlberg for positing a moral hierarchy centered on a male-oriented ethos of justice or rights.²³ Gilligan asserted that the female-oriented ethos of care should be accorded equal dignity in creating a moral hierarchy and in making judgments about relative moral maturity.²⁴

Gilligan's central exposition of the different approach of females and males in dealing with moral issues involves one of Kohlberg's moral hypotheticals.²⁵ The hypothetical dilemma involved a situation where Heinz's wife is in desperate need of a drug that can save her life but Heinz cannot afford to purchase the drug from the pharmacist.²⁶ The responses of Jake, a typical young boy, and Amy, a typical young girl, illustrate the different levels of moral development reached by each gender under Kohlberg's scale of moral development.²⁷

18. Kohlberg, *Moral Stages*, *supra* note 16, at 34-35.

19. Kohlberg, *Moral Stages*, *supra* note 16, at 34-35.

20. Kohlberg, *Moral Stages*, *supra* note 16, at 34-37, 49-51.

21. See GILLIGAN, *supra* note 1, at 18-23, 25-31, 54-55, 72-73 (describing studies that were based on Kohlberg's six-stage theory of moral development). These studies indicated that women are deficient in moral development because their judgments exemplified the third stage of the six-stage sequence. *Id.* at 18.

22. GILLIGAN, *supra* note 1, at 18 (stating that female moral judgments reach only third stage in Kohlberg's six-stage scale, but such deficiency is paradoxical because traits that women possess, which cause low rank on Kohlberg's scale, are those traits for which women are often praised—caring and sensitivity to needs of others); see Joan C. Tronto, *Beyond Gender Difference to a Theory of Care*, 12 SIGNS 644, 647-48, 648-49, n.12 (1987) (describing Gilligan's *In a Different Voice* as book that addresses problems with Kohlberg's theory and discussing theoretical dispute between Kohlberg and Gilligan). For a helpful analysis of the impact of Gilligan's theory, see Anne-Marie Turnier, *The Political Ramifications of Femininity: Maternalist Theory in Perspective* (Jan. 27, 1992) (unpublished undergraduate thesis, Smith College, on file with *The American University Law Review*).

23. GILLIGAN, *supra* note 1, at 18-23.

24. GILLIGAN, *supra* note 1, at 167-74.

25. See GILLIGAN, *supra* note 1, at 25-39; Kohlberg, *Moral Stages*, *supra* note 16, at 33-40 (setting forth hypothetical moral dilemmas used by Gilligan).

26. GILLIGAN, *supra* note 1, at 25.

27. GILLIGAN, *supra* note 1, at 26-39.

Jake quickly sees the moral dilemma as involving a conflict between the right to life and the right to property.²⁸ He realizes that the former is more important than the latter and concludes that theft of the drug is morally justifiable.²⁹

Amy, on the other hand, is torn between stealing the drug and confronting the death of Heinz's beloved wife.³⁰ She seeks accommodations, such as a loan, whereby Heinz might obtain the drug without stealing it and sees the druggist's failure to provide a mechanism whereby Heinz can obtain the drug as providing the principal moral issue in the scenario.³¹

Gilligan tells us that Kohlberg would have us believe that Amy's reactions were indicative of her inability to view the dilemma as involving a clash between two rights, which occupy different places in a moral hierarchy, and her inability to address the proper choice in this conflict between morally unequal principles.³² Amy's response is reflective of a level of moral development, which Kohlberg would find inferior to that of Jake.³³ Gilligan sees Amy's response as the result of a moral insight, which does not value abstract moral principles as much as it values sustaining concrete harmonious interpersonal relationships.³⁴ Amy's approach, which emphasizes accommodating the interconnectedness of all involved in moral conflicts, should be contrasted and compared with, but not subordinated to, Jake's rights-oriented approach to the dilemma.³⁵

As support for the proposition that males and females employ different modes of resolving moral conflict, Gilligan notes that studies of children at play demonstrate that groups of young boys and groups of young girls at play manifest different ways of dealing with cheaters.³⁶ Boys tend to remonstrate with the transgressor and ostracize him from the group.³⁷ Girls, if they fail in their effort to have all play by the rules, will change the game to maintain cohesion of the group.³⁸ Each group seeks to carry out worthy goals—strict enforcement of rules and maintenance of group cohesion—and each reflects values that are useful for social organization. Gilligan asserts that the

28. GILLIGAN, *supra* note 1, at 26.
29. GILLIGAN, *supra* note 1, at 26-27.
30. GILLIGAN, *supra* note 1, at 28.
31. GILLIGAN, *supra* note 1, at 27-29.
32. GILLIGAN, *supra* note 1, at 28-31.
33. GILLIGAN, *supra* note 1, at 29-30.
34. GILLIGAN, *supra* note 1, at 29-31.
35. GILLIGAN, *supra* note 1, at 31-32.
36. GILLIGAN, *supra* note 1, at 10-11.
37. GILLIGAN, *supra* note 1, at 10-11.
38. GILLIGAN, *supra* note 1, at 10-11.

ethos of rights, which characterizes the male approach to moral issues, and the ethos of care, which characterizes the female approach, make equally valuable social and moral contributions and that neither is superior to the other.³⁹ Contrast this with some later cultural feminists who imply the superiority of the results that follow from application of the ethos of care.⁴⁰

Gilligan also posits that males define themselves by separation from others, whereas females define themselves by identification or connection with others.⁴¹ Although Gilligan does not speculate on the cause for such differences, some cultural feminists, such as Professor Nancy Chodorow, perceive that these differences develop early in life.⁴² For example, when young boys notice the physical difference between themselves and their primary caregivers, their mothers, they place themselves on the path toward defining themselves through separation or individuation.⁴³ Young girls, on the other hand, notice the physical similarities between themselves and their mothers, and consequently proceed to define themselves and others based on connectedness, not separation.⁴⁴ Thus men see first the self, the individual, whereas women first see the connectedness of us all in a web.⁴⁵

Professor Carrie Menkel-Meadow describes this feature of cultural feminism:

In tracing through the sources of these different approaches to moral reasoning, Gilligan's analysis tracks that of Chodorow, Dinnerstein and Noddings. Men, who have had to separate from their differently gendered mother in order to grow, tend to see moral dilemmas as problems of separateness and individual rights, problems where choices must be made and priorities must be ordered. Women, who need not completely separate from their same gendered mother in order to grow, see the world in terms of connections and relationships. "While women thus try to change

39. GILLIGAN, *supra* note 1, at 167-74.

40. See Bender, *Feminist (Re)torts*, *supra* note 5, at 767-73 (arguing that application of female "voice" to tort law would improve system by redefining "responsibility" as more multidimensional); Karst, *supra* note 5, at 491-93 (concluding that application of care perspective to constitutional issues will result in greater number of litigants seeking access to Supreme Court); Areen, *supra* note 5, at 1079-80 (asserting that applying care perspective to AIDS crisis will yield better results than present application of justice perspective).

41. GILLIGAN, *supra* note 1, at 34-35, 55.

42. NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER* 57-76 (1978) (positing that gender differences start at infancy).

43. *Id.* at 108-10.

44. *Id.*

45. GILLIGAN, *supra* note 1, at 7-8 (summarizing theory of child development that holds that "masculinity is defined through separation while femininity is defined by attachment").

the rules in order to preserve relationships, men, in abiding by these rules, depict relationships as easily replaced." Where men see danger in too much connection or intimacy, in being engulfed and losing their own identity, women see danger in the loss of connection, in not having an identity through caring for others and by being abandoned and isolated.⁴⁶

Although Gilligan does not see the ethos of care and the ethos of rights as the exclusive moral preserves of women and men respectively, she finds that each gender tends strongly to favor the moral perspectives that she attributes to that gender.⁴⁷

Recent critics of Gilligan have accused her of attacking a straw person. For example, Professor Lawrence Walker analyzed sixty-one studies that employed the Kohlberg paradigm to compare moral reasoning for each sex.⁴⁸ His study indicated that through adolescence, there was no perceived trend of differences in scores between males and females.⁴⁹ Although some studies of adult males and females did report higher scores for males in Kohlberg's scale of cognitive moral development, Walker found that the difference was explained by differences in education between the tested females and males, with the former being less well educated than the latter.⁵⁰ Once adjustment was made for this gap, Walker reported that no significant difference remained in scores of males and females.⁵¹ Nonetheless, despite questions about such shortcomings in her work, Gilligan's message that there is both a male-oriented and a female-oriented approach to moral reasoning has spawned a school of feminist jurisprudence that cannot be ignored.

Gilligan's work and the related jurisprudence are having a significant impact on present legal thought. To gain some measure of its

46. Menkel-Meadow, *Portia*, *supra* note 5, at 47 (quoting CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* 44 (1982)). In a similar vein, Suzanna Sherry asserts that "[f]eminist scholars identify three primary dichotomies between men's and women's thinking: while women emphasize connection, subjectivity, and responsibility, men emphasize autonomy, objectivity, and rights." Sherry, *supra* note 7, at 582.

47. See Carol Gilligan, *Moral Orientation and Moral Development*, in *WOMEN AND MORAL THEORY* 19, 25 (Eva Feder Kittay & Diana T. Meyers eds., 1987) (positing that approximately one-third of each gender speaks in both voices and about two-thirds of each gender speak solely in the voice which she assigns to it).

48. Lawrence T. Walker, *Sex Differences in the Development of Moral Reasoning: A Critical Review*, in *AN ETHIC OF CARE: FEMINIST AND INTERDISCIPLINARY PERSPECTIVES* 157, 157-76 (Mary Jeanne Larrabee ed., 1993).

49. *Id.* at 162-66.

50. *Id.* at 166-71.

51. *Id.* at 171-75; see Catherine G. Greeno & Eleanor E. Macoby, *How Different Is the "Different Voice"?*, in *AN ETHIC OF CARE: FEMINIST AND INTERDISCIPLINARY PERSPECTIVES* 193, 194-95 (Mary Jeanne Larrabee ed., 1993) (analyzing Walker's studies and concluding that "there is no indication whatever that the two sexes take different developmental paths with respect to moral thought about abstract, hypothetical issues").

relative importance on recent scholarship, we conducted a computerized search of law review articles that cited her work and were published between January 1, 1989, and January 1, 1995. We discovered that Gilligan was cited in 357 articles. To gain some sense of the significance of this achievement, we conducted a similar search for other major contributors to legal philosophy examining the same time period and report the number of citations in parenthesis following their names: Lord Coke (111); Learned Hand (895); H.L.A. Hart (539); Oliver Wendell Holmes (733); John Stuart Mill (507); Roscoe Pound (441); and John Rawls (617).⁵² The comparison is dramatic and demonstrates that the community of legal scholars seriously considers Gilligan's work and the work of the cultural feminists.⁵³

Legal cultural feminists focus on Gilligan's observed differences between men and women and demand that society pay equal, or more, attention to women in creating its legal constructs. They assert that virtually all our existing legal system is the product of the male ethos of rights. They believe that, were society to listen to a woman's different voice, it would construct a somewhat different set of legal rules and mechanisms for resolving legal problems.⁵⁴ Some commentators attribute the origin of the different voice to biology (nature);⁵⁵ others attribute it to environment (nurture);⁵⁶ and still others find it

52. The search was conducted on *Lexis* by looking for all entries listing the last name in question and a first initial or name starting with the first initial of the first name of the party. It is possible that on a few occasions extraneous material was generated that is included in the above comment. However, each of the names in question are equally likely to generate such material, and thus the relative comparisons remain valid. Search of *Lexis*, Law Rev. library, Allrev file (Mar. 9, 1995).

We also note that the above methodology, because it counts only books and articles authored by these individuals, does not measure the full impact on legal thought of members of the judiciary such as Judge Hand and Justice Holmes whose judicial opinions are typically cited without indication of authorship.

53. While we concede that not every citation of Gilligan is by a scholar who subscribes to the cultural feminist movement, the same can be said of the work of the other individuals that we searched. The bottom line remains that cultural feminism is a major current of jurisprudential thought in this era.

54. See *supra* note 5 (describing differences between male and female perspectives and impact of different voices on law).

55. See Daniel Goleman, *Special Abilities of the Sexes: Do They Begin in the Brain?*, *PSYCHOL. TODAY*, Nov. 1978, at 48, 56 (concluding that at least some differences in aptitudes between men and women may be neurologically determined); Diane McGuinness & Karl H. Pribram, *The Origins of Sensory Bias in the Development of Gender Differences in Perception and Cognition*, in *COGNITIVE GROWTH AND DEVELOPMENT: ESSAYS IN MEMORY OF HERBERT G. BIRCH* 1, 5-6, 48 (Morton Bortner ed., 1979) (concluding that sex differences in perception and cognition are not due to environmental contingencies but to biological differences that account for differing sensory capacities).

56. See CHODOROW, *supra* note 42, at 28-82 (positing that gender differences begin with child's relationship with its mother, its primary caretaker); DOROTHY DINNERSTEIN, *THE MERMAID AND THE MINOTAUR: SEXUAL ARRANGEMENTS AND HUMAN MALAISE* 28-32 (1976) (stating that

unnecessary to determine its origin.⁵⁷

Cultural feminists see the different voice of women as having two distinct impacts on our legal system. First, as members of the legal profession, women are viewed as having a potential impact on the profession, with female attorneys and judges approaching and resolving legal conflicts in a fashion that differs from the behavior of their male counterparts.⁵⁸ Second, if society were to base its substantive rules on an ethos of care, rather than the existing male-oriented ethos of rights or justice, different fundamental choices would be made, choices that reflect care and connectedness rather than individual rights and separation.⁵⁹

1. *Cultural Feminism and the Legal Profession*

Professors Carrie Menkel-Meadow,⁶⁰ Suzanna Sherry,⁶¹ and Kenneth Karst⁶² provide good examples of cultural feminist jurisprudence that holds that woman's different voice has the potential to change the way the legal profession functions.

Professor Menkel-Meadow indicates that women, because of their emphasis on the ethos of care and their concern about preserving relationships, would move society away from its win-lose confronta-

differences between men and women begin with different relationships each sex has with its mother: boys see their mother as different but girls see her as similar).

57. See generally CAROL TAVRIS & CAROLE OFFIR, *THE LONGEST WAR: SEX DIFFERENCES IN PERSPECTIVE* (1977) (examining sex differences from five different perspectives: biological, psychoanalytic, learning, sociological, and evolutionary without proclaiming "correct" reason for differences between men and women). For a discussion of the nature versus nurture issue, see Turnier, *supra* note 22, at 28-50. Despite debates about origins, Patricia Cain has observed: "[w]hether viewed as natural or socially constructed, woman's capacity for caring and connection has provided substance for an interesting debate between radical feminist MacKinnon and cultural feminist Gilligan." Cain, *supra* note 6, at 837.

58. See Menkel-Meadow, *supra* note 5, at 39-41 (stating that "women's entry into formerly male-dominated fields has changed both the knowledge base of the field and the methodology by which knowledge is acquired").

59. See *infra* note 74 and accompanying text.

60. See Carrie Menkel-Meadow, *Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law*, 42 U. MIAMI L. REV. 29, 44-46 (1987) (proposing that influx of women in legal system will result in less adversarial modes of dispute resolution, which would flow from women's desire to care for others); Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School"*, 38 J. LEGAL EDUC. 61, 71-85 (1988) (arguing that application of feminist critical theory to legal education will result in alternatives to conventional legal education such as substituting consciousness-raising groups or other non-hierarchical learning methods for traditional socratic method); Menkel-Meadow, *Portia*, *supra* note 5, at 41-63 (applying Gilligan's care perspective to lawyering process to evaluate legal profession from both male and female "voices").

61. See Sherry, *supra* note 7, at 580-613 (arguing that feminine perspective in judiciary will result in changing interpretations of Constitution).

62. See Karst, *supra* note 5, at 491-93 (concluding that feminine perspective will result in abandonment of "state action" requirement).

tional, adversarial trial system toward a system that emphasizes mutual respect and conciliation.⁶³ She posits:

In sum, the growing strength of women's voice in the legal profession may change the adversarial system into a more cooperative, less war-like system of communication between disputants where solutions are mutually agreed upon rather than dictated by an outsider, won by the victor, and imposed upon the loser. Some seeds of change may already be found in existing alternatives to the litigation model, such as mediation.⁶⁴

She suggests that, as counselors, female attorneys might better understand the range of a client's needs and objectives because it is in the lawyer-client relationship where the values of care and responsibility for others will be most directly applicable.⁶⁵ Professor Menkel-Meadow believes that women's tendency to personalize and contextualize problems may lead female attorneys to a fuller understanding of the complexities of their clients' legal problems.⁶⁶ She also suggests that female judges are likely to approach the trial's quest for resolution of conflict differently, with male judges emphasizing justice, and female judges emphasizing mercy and a resolution acceptable to all.⁶⁷

Professor Sherry, as a result of her examination of a number of Justice O'Connor's opinions that deal with the Establishment Clause, discrimination, and what she described as community perspective issues, reports to have found within them evidence of the presence of a woman's different voice.⁶⁸ She claims to have found ample

63. Menkel-Meadow, *Portia*, *supra* note 5, at 50-55.

64. Menkel-Meadow, *Portia*, *supra* note 5, at 54-55.

65. Menkel-Meadow, *Portia*, *supra* note 5, at 57.

66. Menkel-Meadow, *Portia*, *supra* note 5, at 58.

67. Menkel-Meadow, *Portia*, *supra* note 5, at 59.

68. See Sherry, *supra* note 7, at 592-611. Sherry, drawing on the work of cultural feminists such as Nancy Chodorow and Carol Gilligan, posits that contemporary men and women have distinctly different perspectives on the world that prompt each to opt for differing political and jurisprudential theories. *Id.* at 543-50. She asserts that the cultural feminist perspective favors the classical communitarian, virtue-based framework of Jeffersonian republicanism whose central theme is connection rather than autonomy. *Id.* at 580-92. Under this theory of government, a citizen most fully exists as a member of the community. *Id.* at 546-49. Here, "[r]elationships among individuals are more important than the discrete, abstract individual themselves." *Id.* at 547. Individual liberty is presumed to be synonymous with public liberty, and individual fulfillment comes from sharing in the collective autonomy. *Id.* at 548. According to Sherry, this form of classical republicanism, with its communitarian values and belief that the purpose of government was the ennobling of the human spirit, underlay the American Revolution but was eventually replaced by a Lockean liberalism, which subsequently formed the basis for the American Republic and Constitution. *Id.* at 541-60. Sherry asserts that classic liberalism shifted the focus of the purpose of government to the protection of private aims and interests, exalting the citizen as individual over the citizen as member of the community. *Id.* at 550-62. This was accomplished "by shifting the function of government from promoting and perfecting human nature to protecting the exercise of individual human nature." *Id.* at 560. Classic liberalism saw

evidence of Justice O'Connor displaying more concern with communitarian values than her male counterparts on the Court.⁶⁹ Professor Sherry also reported that her reading of Justice O'Connor's opinions indicated that they displayed greater concern with contextuality and less emphasis on bright-line rules and abstract decisionmaking than do the opinions written by the male members of the Court.⁷⁰ Professor Sherry concedes that, despite Justice O'Connor's use of a different value system in reaching judicial decisions, this has yet to translate into positions on issues that are at variance with those of her conservative male colleagues on the Court.⁷¹

Professor Karst is a cultural feminist who believes that the different voice of female judges on constitutional issues is likely to translate into different opinions on substantive constitutional issues.⁷² Professor Karst's colleague, Professor Menkel-Meadow, aptly summarized his opinion of the potential of female judges to change our understanding of the Constitution:

He suggests that women's concern for "webs of connection" might result in a more inclusive reading of the equal protection clause. Further, he suggests that the values in the Constitution may derive from a male conception of freedom that is expressed in terms of freedom *from* the interference of others. For example, the rights of liberty, property, due process and equality express a desire for

the adoption of the Constitution as necessary to promote safety and prosperity. *Id.* Sherry observes that individualism, as embodied in the Bill of Rights, became the hallmark of American political ideology. *Id.* at 560-62. Sherry identifies this breed of classic liberalism, which has characterized our jurisprudence for the past two hundred years, with the ethos of rights or justice. *Id.* at 559-62, 582-83.

According to Sherry, there has been a resurgence of interest in classic republican theory that parallels, or perhaps is impelled, by women's increasing participation in the political processes and the development of cultural feminist theory based on the work of scholars such as Nancy Chodorow and Carol Gilligan. *Id.* at 580-81. The emphasis of cultural feminism on communitarianism and contextuality compliments classic republicanism's concern with such values. *Id.* at 574-91.

69. See Sherry, *supra* note 7, at 592-604 (stating that Justice O'Connor's emphasis on communitarian values is evident in her Establishment Clause decisions where she often characterizes "government endorsement of religion as a detriment to one's membership in the community, rather than as a violation of one's individual rights," and in her discrimination decisions where Justice O'Connor seems "reluctan[t] to accept conduct that condemns groups of individuals to outsider status").

70. See Sherry, *supra* note 7, at 604-13 (describing Justice O'Connor's opinion in *Bearden v. Georgia*, 461 U.S. 660 (1983), in which she refused to focus on whether to apply due process or equal protection analysis and instead inquired into factors surrounding indigent's failure to pay fine and restitution).

71. See Sherry, *supra* note 7, at 613.

72. See Karst, *supra* note 5, at 463-508 (stating that introduction of ethos of care to settlement of social conflict would cause courts to "redefine the idea of discrimination" by recognizing that law's discriminatory impact, rather than discriminatory purpose, established constitutional harm).

separation from the government and from others. In essence, our basic liberties are expressed as individual liberties rather than as collective rights.

Karst evocatively suggests that a women's voice of care and connection might lead to doctrinal changes in the areas of state action in discrimination law and in the state's affirmative duty to assist all its members to be able to fully participate in the community. Thus, our conception of state responsibility under the Constitution might be enlarged, and a conception of "responsibility" might supplement or replace altogether our notion of individualistic constitutional "rights." Karst also suggests that the political context of lawmaking, particularly in the constitutional arena, would be more likely to be expressly involved in legal decisionmaking with a stronger women's voice by explicitly providing for more participation by women on the theory that they have something unique to contribute. Most interesting in Karst's analysis is the notion that the very terms of our constitutional and legal vocabulary might be redefined with a women's voice in greater evidence; words such as liberty, autonomy and equality might come to mean different things when expressed with a women's voice or looked at in a women's context.⁷³

2. *Cultural feminism and procedural and substantive law*

Cultural feminists have speculated even more concretely regarding the potential of a woman's different voice to have impact on specific areas of procedural and substantive law. In general, they believe that the ethos of care and woman's sense of connectedness will result in substantive rules that reflect less of abstract concepts of individual rights and more of concern about the injured and isolated. Much of the existing body of law is considered to be the result of society's having structured its procedural and substantive laws based on a male-dominated ethos of rights and justice.⁷⁴ If, however, society based its system of laws on the feminine ethos of care, cultural feminists are of the opinion that different choices would have been made.⁷⁵

Perhaps it should come as no surprise that cultural feminists believe that the ethos of care would produce different answers on issues intimately affecting women, such as discrimination and maternity leave.⁷⁶ Indicative of the vision of cultural feminists for the potential

73. Menkel-Meadow, *Portia*, *supra* note 5, at 60-61 (footnotes omitted).

74. *See, e.g., infra* notes 76-108 and accompanying text.

75. *See, e.g., infra* notes 76-108 and accompanying text.

76. *See, e.g.,* Lucinda M. Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118, 1122 (1986) (saying that ethos of care would create new approach to state laws regarding availability of maternity leave and to legal debate surrounding special treatment versus equal treatment of sexes); Karst, *supra* note 5, at 480-508

of woman's different voice to produce sweeping fundamental change in our legal system is the fact that the theory has found application in areas of the law as diverse as bankruptcy,⁷⁷ taxation,⁷⁸ torts,⁷⁹ corporations,⁸⁰ and the legal rights of AIDS victims.⁸¹ To illustrate the far reaching impact of this school of jurisprudence, it is worthwhile to explore the work of several cultural feminist scholars in these areas.

Professor Judith Areen has written on the subject of AIDS, comparing likely responses to this issue under the ethos of care and the ethos of rights.⁸² Areen indicates that a different approach to the AIDS issue would be taken under the care perspective, which she identifies with women, than would be taken under the justice perspective, which she identifies with men.⁸³ She posits:

A justice perspective, . . . would ignore the need of people with HIV for care, beyond ensuring that they are not discriminated against in the provision of medical services or in other ways. The focus would be on deterring such individuals from harming others by transmitting the virus. Public policy founded on a justice perspective, therefore, would emphasize punishing the knowing transmission of HIV. Repeat offenders might even be quarantined.⁸⁴

Areen indicates that under the care perspective, government would provide medical and emotional care for AIDS victims and would

(stating that adding women's voice to legal arena would cause courts to "redefine the idea of discrimination, abandoning the requirement of a showing of discriminating purpose, in favor of a principle recognizing a law's discriminatory impact as a constitutional harm requiring justification by the state").

77. See Karen Gross, *Re-Vision of the Bankruptcy System: New Images of Individual Debtors*, 88 MICH. L. REV. 1506, 1554-56 (1990) (applying feminist approach to bankruptcy law reveals that it is male-oriented field and that it is symptomatic of female povertization).

78. See Kornhauser, *supra* note 11, at 507-23 (saying that female perspective of tax law would result in application of progressive tax).

79. See Bender, *A Lawyer's Primer*, *supra* note 5, at 4, 28-37 (critiquing tort law by applying major tenets of feminist theory to its current state); Bender, *Changing the Values*, *supra* note 5, at 760 (proposing that different voice will alter tort vocabulary by changing meaning of responsibility); Bender, *Feminist (Re)torts*, *supra* note 5, at 895-96, 901-08 (concluding that feminist ideology would change ideology of tort law from individualist to interconnectedness).

80. See Teresa A. Gabaldon, *The Lemonade Stand: Feminist and Other Reflections on the Limited Liability of Corporate Shareholders*, 45 VAND. L. REV. 1387, 1446-56 (1992) (stating that feminists would disapprove of concept of limited liability but support concept of limited risk).

81. See Areen, *supra* note 5, at 1078-82 (applying feminist care perspective to AIDS battle would lead people to ascertain HIV status of others, to avoid transmission, and to protect those infected from discrimination).

82. See Areen, *supra* note 5.

83. See Areen, *supra* note 5, at 1073, 1079.

84. Areen, *supra* note 5, at 1079 (footnotes omitted).

address problems through education, self responsibility, voluntary restraint, and testing.⁸⁵

Professor Leslie Bender, one of the leading cultural feminists asserts that our present system of tort law is the product of the male ethos of justice. She suggests that if society were to listen to a woman's different voice, different substantive and remedial rules would result. She states:

We need to shift from a rights-based focus to a focus on both care and rights/justice, from power-over to empowering, from the priority of the market and money to a priority of personal relationships, health, safety, and human dignity in deciding personal injury disputes. The solution is not to substitute one paradigm for another, but rather it is constructing a new paradigm that melds the valuable components of both approaches.⁸⁶

Professor Bender observes that our system of tort laws incorporates concepts and norms that are the products of concern for economic efficiency and a male-dominated ethos of rights or justice.⁸⁷ If the system were to reflect the feminine ethos of care with its central values of connectedness and responsibility, Professor Bender argues that different substantive rules would result.⁸⁸ For example, she observes that "[f]rom a feminist perspective the duty of care required by negligence law might mean 'acting towards others to avoid harm, with a concern about the human consequences of our acts or failure to act.'"⁸⁹ She suggests that a tort system based on an ethos of care might never have developed the doctrine that bystanders at the sight of a tragedy have no duty to rescue a victim.⁹⁰ The ethos of care might instead be expected to impose a duty to act responsibly toward victims of impending disaster where assistance could be granted at no risk to the rescuer.⁹¹ She also suggests revising our law of remedies from a feminist perspective; supplementing money damages by requiring the wrongdoer, especially in mass torts, to care personally for the victims of their wrongdoing.⁹² Professor Bender also asserts

85. See Areen, *supra* note 5, at 1079.

86. Bender, *Feminist (Re)torts*, *supra* note 5, at 907.

87. Bender, *A Lawyer's Primer*, *supra* note 5, at 30-31; Bender, *Changing the Values*, *supra* note 5, at 767; Bender, *Feminist (Re)torts*, *supra* note 5, at 903-04.

88. Bender, *A Lawyer's Primer*, *supra* note 5, at 31-32.

89. Bender, *A Lawyer's Primer*, *supra* note 5, at 32.

90. Bender, *A Lawyer's Primer*, *supra* note 5, at 33-34.

91. Bender, *A Lawyer's Primer*, *supra* note 5, at 33-36.

92. Bender, *A Lawyer's Primer*, *supra* note 5, at 36-37; see Bender, *Changing the Values*, *supra* note 5, at 767-73 (applying feminist theory to define responsibility in tort as "taking care of" tort victims, including "direct, personal services of caregiving" ranging from "shopping, transportation and arranging for medical treatments, to retraining or educating, to feeding and aiding in personal hygiene care, to rebuilding self-confidence, and even spending time with the injured

that, in mass tort suits, the feminist perspective also warrants our "alter[ing] burden-shifting rules by placing the risks of nonproduction and nonpersuasion on the more-empowered party to the litigation, which in mass tort would probably be a corporate defendant."⁹³ She suggests that, to empower the unempowered, tort law could be altered so that the filing of a claim in a mass tort action would result in raising a rebuttable presumption of liability that operates against the corporate defendant.⁹⁴

Cultural feminists have also noted the potential for the ethos of care to reshape commercial law. For example, Professor Theresa Gabaldon finds the existing corporate law doctrine of limited liability to be inconsistent with cultural feminist values⁹⁵ because the doctrine distances individuals from the effects of their investments, thus decreasing their acknowledged personal responsibility.⁹⁶ According to Professor Gabaldon, a system of corporate laws designed by feminists would reflect the connectedness of all, investor and consumer, as well as our mutual responsibility toward each other.⁹⁷ Such a system of laws, she asserts, would not include as one of its features the limited liability doctrine.⁹⁸

Professor Karen Gross contends that, in the debtor-creditor context, we appear to have designed "[a] bankruptcy system based on a one-gender (male) image of debtors and with an unsophisticated approach to the moral dilemma confronting individuals who cannot repay their creditors."⁹⁹ She asserts that certain debtors, especially women, are uncomfortable with the abrupt disruption of the debtor-creditor relationship present in the liquidation option provided by

person and treating her with dignity and importance") (footnote omitted); Bender, *Feminist (Re)torts*, *supra* note 5, at 895-906 (rejecting notion that responsibility for tort injuries merely means making reparations and advocating "remedies that respond to victims' needs for community, care, and relationships [while requiring] responsible individual defendants to perform the physical and emotional caregiving work").

93. Bender, *Changing the Values*, *supra* note 5, at 764 (footnote omitted); *see also* Bender, *Feminist (Re)torts*, *supra* note 5, at 878-95.

94. Bender, *Changing the Values*, *supra* note 5, at 764.

95. *See* Gabaldon, *supra* note 80, at 1428-30.

96. Gabaldon, *supra* note 80, at 1429.

97. Gabaldon, *supra* note 80, at 1428-29.

98. Gabaldon, *supra* note 80, at 1429, 1445-48. Gabaldon recognizes that immediate restructuring of corporate law along feminist lines is unlikely and suggests the acceptance of several lesser steps consistent with basic feminist goals. *Id.* at 1445. She views greater investor empowerment and requirements that businesses carry adequate insurance as the minimal corrective steps that could be taken short of eradication of limited liability. *Id.* at 1448-54. For Gabaldon, both would represent steps in the right direction reflective of a greater awareness of key cultural feminist values of connectedness and mutual responsibility. *Id.*

99. Gross, *supra* note 77, at 1541 (footnote omitted).

Chapter 7 of the Bankruptcy Code.¹⁰⁰ Professor Gross recognizes that solutions that go to the root of the problem, such as eradication of structural social features leading to women's impoverishment and replacement of the adversarial bankruptcy process with mediation, are not likely to be realized soon.¹⁰¹ She observes that, in the short term, cultural feminist values implicit in the work of Professor Gilligan suggest that we respond to this problem by humanizing the bankruptcy process.¹⁰² Professor Gross suggests that bankruptcy proceedings provide individual debtors with financial and personal counseling as well as give debtors a chance to tell their own stories rather than by checking blocks on official forms or in response to the questions of creditor attorneys.¹⁰³

Professor Marjorie Kornhauser, a feminist tax scholar in the arena of public finance, believes that the female voice provides strong support for progressive income taxation because¹⁰⁴

[t]he female voice emphasizes our relatedness to others. It builds bridges rather than barriers. In this sense, the feminist vision is aligned with other communitarian visions such as classical republicanism, whereas the male vision more closely follows the pluralistic, individualistic, liberal theory of today.¹⁰⁵

She sees this feminist vision of humanity not merely as supportive of, but compelling, progressivity.¹⁰⁶ Recognition of the relatedness of all members of society requires acceptance of redistributive progressive income taxation as a means for individuals to fulfill their responsibility to others.¹⁰⁷ Presumably, those individuals that adhere to the ethos of rights or justice with its emphasis on individual autonomy could be expected to favor proportional taxation of income.¹⁰⁸

100. Gross, *supra* note 77, at 1541. Bankruptcy proceedings commenced under Chapter 7 of the Code generally entail collecting the debtor's property, selling the property and distributing the proceeds of the sale to creditors. See 11 U.S.C. §§ 701-766 (1994). Typically, however, Chapter 7 proceedings discharge debtors without any distribution to unsecured creditors, with secured creditors taking all the debtor's assets or the debtor retaining the assets pursuant to various exemption laws. DAVID G. EPSTEIN ET AL., *BANKRUPTCY* 449 (1993).

101. Gross, *supra* note 77, at 1544.

102. Gross, *supra* note 77, at 1545.

103. Gross, *supra* note 77, at 1545-46.

104. Kornhauser, *supra* note 11, at 504-18.

105. Kornhauser, *supra* note 11, at 511.

106. Kornhauser, *supra* note 11, at 518.

107. Kornhauser, *supra* note 11, at 518.

108. Kornhauser, *supra* note 11, at 498-504. Professor Kornhauser does acknowledge that payments of the ethos can support progressive taxation in a variety of philosophical reasons which are independent of the ethos of rights. Among the reasons for their support of progressive taxation she cites: (1) the benefits theory of taxation; (2) maintenance of preconditions of negative liberty; (3) political arguments that too unequal a distribution of

As the foregoing discussion demonstrates, cultural feminists view woman's different voice as having the potential to produce dramatic changes in the legal profession, the judiciary, and in our procedural and substantive laws. While men center their value systems around abstract concepts such as justice and a system of rights based on individual autonomy, women emphasize interconnectedness and center their value systems around preservation of relationships, care, and responsibility. With these two positions as starting points, cultural feminists theorize about the potential impact of women's voice for changing the legal profession and various features of our system of procedural and substantive law. We believe that, given the basic predicate of cultural feminism that women possess perspectives on moral issues that differ from those of men, it is most appropriate to weigh that impact of those perspectives and to verify theoretical speculation by analyzing the opinions held by a broad-based, scientifically selected sample of women and comparing it with the opinions held by a similar group of men. We will undertake that task on the issue of redistributive justice. We have chosen redistributive justice as the focal point for our study because we believe that if cultural feminism's theoretical postulate about the greater commitment of women to communitarianism and care is correct, this should manifest itself in women being more supportive than men of redistributive justice measures. Before setting forth the results of our study and analysis of the data generated by that study, we will briefly describe the remaining three schools of feminist jurisprudence.

B. *Liberal Feminism*

The liberal feminist school holds that women are autonomous beings endowed with the same basic rights and privileges as men.¹⁰⁹ It rejects all attempts to deny women the full array of rights and privileges of citizenship offered to men.¹¹⁰

The struggle for women's rights throughout the nineteenth and all but the closing days of the twentieth century has been largely the

wealth may harm society; and (4) appreciation of the value of a form of social insurance inherent in redistribution justice. Kornhauser, *supra* note 11, at 519-23.

109. For discussion of liberal feminism, see Cain, *supra* note 6, at 829-32; Marion Crain, *Feminizing Unions: Challenging the Gendered Structure of Wage Labor*, 89 MICH. L. REV. 1155, 1207-19 (1991); Cass R. Sunstein, *Feminism and Legal Theory*, 101 HARV. L. REV. 826, 827 (1988) (reviewing CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED* (1987)) (referring to liberal feminism as "difference" school "which argues that women should be permitted to compete on equal terms with men in the public world").

110. Cain, *supra* note 6, at 829-32; Crain, *supra* note 109, at 1207-19.

product of legal liberalism.¹¹¹ For example, the Declaration of Sentiments adopted at the 1848 Seneca Falls Convention was patterned after the Declaration of Independence with "Man" substituted for "King George."¹¹² It stated that "all men and women are created equal; they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness."¹¹³ The intellectual underpinnings of the early American women's movement are attributed to the legal liberal philosophers of the eighteenth and nineteenth century, such as Mary Wollstonecraft, John Stuart Mill, and Harriet Taylor, all of whom played major roles in applying liberal theory to women's issues.¹¹⁴

The women's suffrage movement of the late nineteenth and early twentieth century combined liberal feminism's emphasis on equality of the sexes with cultural feminism's celebration of gender differences in the successful battle to win the vote for women.¹¹⁵ In the mid-twentieth century, when women sought to better their social, political, and economic positions, they patterned their efforts after those of the National Association for the Advancement of Colored People (NAACP), which had relied on the rights-oriented liberal jurisprudence in making its assault on Jim Crow segregation.¹¹⁶ It is under the banner of liberal feminism that women have won most of their legislative and judicial victories, including equal pay, benefits, access to employment and education,¹¹⁷ the right to serve on juries,¹¹⁸

111. See MARY BECKER ET AL., *FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* 1-16 (1994) (detailing historical background of feminist legal theory); DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* 12-14 (1989) (explaining influence of liberalism on early feminists); ALICE FELT TYLER, *FREEDOM'S FERMENT* 424-62 (1944) (providing classic discussion of legal liberalism movement in pre-Civil War period).

112. TYLER, *supra* note 111, at 453-54; *The Declaration of Sentiments*, reprinted in BECKER ET AL., *supra* note 111, at 3-6.

113. *Declaration of Sentiments*, *supra* note 112, at 3.

114. See RHODE, *supra* note 111, at 12 (noting that works of Mary Wollstonecraft and John Stuart Mill provided foundation for views of early American liberal feminists); Cain, *supra* note 6, at 829 & n.101 (acknowledging contributions of early liberal feminists Mary Wollstonecraft and Harriet Taylor).

115. RHODE, *supra* note 111, at 14-19.

116. BECKER ET AL., *supra* note 111, at 17-18.

117. See, e.g., Equal Pay Act of 1963, Pub. L. No. 88-38, § 3, 77 Stat. 56 (codified at 29 U.S.C. § 206(d)) (requiring employers to pay members of both sexes same wages for equivalent work unless specified exception applies); Civil Rights Act of 1964, Title VII, Pub. L. No. 88-352, 78 Stat. 253 (codified as amended in scattered sections of 42 U.S.C. §§ 2000e to 2000e-17) (outlawing, *inter alia*, discrimination in employment on basis of sex); Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103 (codified as amended in scattered sections of 42 U.S.C.) (amending Title VII to provide effective enforcement powers largely in response to employment practices that, while neutral in form, disparately impact women and minorities in practice); City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 711 (1978) (holding that pension plan requiring larger contributions from female employees unlawfully discriminated on basis of sex); *Frontiero v. Richardson*, 411 U.S. 677, 690-91 (1973)

and the right to choose to terminate a pregnancy.¹¹⁹ Some of the leading adherents of this school are Professors Wendy Williams, Herma Hill Kay, and Nadine Taub, although its most prominent representative is Supreme Court Justice Ruth Bader Ginsburg.¹²⁰ Commencing in 1971, while a member of the Rutgers University law faculty, she, with the cooperation of the American Civil Liberties Union (ACLU), participated in a number of lawsuits that challenged gender-based discrimination in a variety of contexts.¹²¹ A series of victories all based on legal liberalism quickly followed. In *Reed v. Reed*,¹²² the Court invalidated a statute that preferred men over women as administrators of estates.¹²³ In *Frontiero v. Richardson*,¹²⁴ the Court held that the families of female military officers were entitled to housing and benefits on the same basis as were the families of male officers.¹²⁵ In *Weinberger v. Wiesenfeld*,¹²⁶ the Court struck down portions of the Social Security Act that awarded child care benefits only to mothers and not to fathers of deceased covered workers.¹²⁷ Some critics have attacked the legal liberal basis of these endeavors because they were based on formal equality of the sexes, reaping victory for women willing to be treated like men.¹²⁸ Others have criticized the willingness of the liberal feminists to represent

(concluding that statute that regarded spouses of male service members as dependents for purposes of obtaining increased allowances and benefits, but regarded spouses of female members as dependents only if they were dependent for more than one-half of their support, unlawfully discriminated on basis of sex).

118. See *Taylor v. Louisiana*, 419 U.S. 522, 525 (1975) (finding that jury selection system granting automatic exemption to women violated accused's Sixth Amendment right to trial by jury selected from representative cross-section of community).

119. See *Roe v. Wade*, 410 U.S. 113, 154 (1973) (recognizing woman's qualified right to terminate her pregnancy). Because pregnancy is a uniquely female experience, it might be tempting to suggest that a judicial decision regarding its termination cannot be based on liberal feminist jurisprudence and must be a victory of cultural or radical feminist jurisprudence. At the time of the Court's decision in *Roe*, liberal feminism was the leading feminist school of thought. Moreover, even a cursory reading of the decision reveals that the Court's opinion was based on relatively conventional liberal concepts of privacy. Recently, the Court employed language that indicated that it was receptive to listening to arguments and employing reasoning based on the cultural feminist perspective. See *Planned Parenthood v. Casey*, 505 U.S. 833, 851-53 (1992) (recognizing that "[t]he destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society").

120. See *Cain*, *supra* note 6, at 829-30 (noting Ruth Bader Ginsburg "spearheaded" much of constitutional litigation brought on behalf of women).

121. See Ruth Bader Ginsburg & Barbara Flagg, *Some Reflections on the Feminist Legal Thought of the 1970s*, 1989 U. CHI. LEGAL FORUM 9, 11, 14-17 (discussing ACLU Women's Rights Project and its impact on gender-based discrimination).

122. 404 U.S. 71 (1971).

123. *Reed v. Reed*, 404 U.S. 71, 77 (1971).

124. 411 U.S. 677 (1973).

125. *Frontiero v. Richardson*, 411 U.S. 677, 690-91 (1973).

126. 420 U.S. 636 (1975).

127. *Weinberger v. Wiesenfeld*, 420 U.S. 636, 653 (1975).

128. See Ginsburg & Flagg, *supra* note 121, at 17 n.32 and accompanying text.

male plaintiffs in cases such as *Weinberger v. Wiesenfeld*.¹²⁹ Justice Ginsburg has characterized such criticisms as unfair given the accomplishments of the endeavor.¹³⁰ Indeed, in a judicial and legislative climate dominated by legal liberalism, it is hardly surprising that most, if not all, of the advancements made for women's rights have been made by proponents of legal liberalism.

C. Radical Feminism

Radical feminists view the existing cultural, social, economic, and legal differences between men and women as the product of male domination.¹³¹ They typically reject cultural feminism for failing to realize that the female characteristics that are central to their thesis are also the product of male domination.¹³² Similarly, they criticize legal liberalism for ignoring the reality of male power and domination in formulating the seemingly neutral principles of liberalism's agenda of sexual equality.¹³³

Professor Catharine MacKinnon is a major spokesperson of this movement.¹³⁴ Two examples, taken from her work, illustrate the basic approach of this school of feminist jurisprudence. The liberal viewpoint on abortion, which prevailed in *Roe v. Wade*, sees the issue

129. Ginsburg & Flagg, *supra* note 121, at 17 n.32 and accompanying text.

130. See Ginsburg & Flagg, *supra* note 121, at 17 (asserting that litigation of 1970s succeeded in "unsettl[ing] previously accepted conceptions of men's and women's separate spheres . . . thereby add[ing] impetus to efforts ongoing in the political arena to advance women's opportunities and stature").

131. See Crain, *supra* note 109, at 1188-90 (discussing tenets of radical feminism); Sunstein, *supra* note 109, at 828-30 (presenting radical feminist argument that gender inequality stems from male domination).

132. See Crain, *supra* note 109, at 1188-90. A leading proponent of this particular school is Catharine MacKinnon. See CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 51 (1989) (criticizing cultural feminists' emphasis on gender differences rather than dominance). MacKinnon observes:

A . . . failure to situate thought in social reality is central to Carol Gilligan's work on gender differences in moral reasoning. By establishing that women reason differently from men on moral questions, she revalues that what has accurately distinguished women from men by making it seem as though women's moral reasoning is somehow women's, rather than what male supremacy has attributed to women for its own use. When difference means dominance as it does with gender, for women to affirm differences is to affirm the qualities and characteristics of powerlessness. Women may have an approach to moral reasoning, but it is an approach made both of what is and of what is not allowed to be. To the extent materialism means anything at all, it means that what women have been and thought is what they have been permitted to be and think. Whatever this is, it is not women's, possessive. To treat it as if it were is to leap over the social world to analyze women's situation *as if* equality, in spite of everything, already ineluctably existed.

Id. (footnote omitted).

133. See MACKINNON, *supra* note 132, at 244-49.

134. See Cain, *supra* note 6, at 833 (noting impact of MacKinnon's ideology on radical feminism).

of reproductive control in the context of a framework of privacy, personal liberty, and autonomy of the individual.¹³⁵ Radical feminism asserts that a host of factors including social pressure, learning, economic disadvantage, sexual force, inadequate contraception, and weak laws against sexual assault have all resulted in a world where women do not control the circumstances under which they become pregnant.¹³⁶ Abortion is needed to redress a woman's basic lack of control over the process of reproduction.¹³⁷ Forced maternity is viewed as a perpetuation of sexual inequality.¹³⁸ The issue of pornography is another issue that sharply delineates the differences between liberalism and radical feminism. Legal liberalism views pornography in the context of freedom of speech and individual autonomy,¹³⁹ whereas radical feminism sees pornography as dehumanizing traffic in women that sets the standard for mistreatment of women, engendering "rape, sexual abuse of children, battery, forced prostitution, and sexual murder."¹⁴⁰ By its very nature, pornography contributes to, and defines, women's social and legal inequality.¹⁴¹ The attempts of radical feminism to restrict pornography have fallen victim to the dominant forces of legal liberalism that pervade our legal system's approach to speech issues.¹⁴²

135. See *supra* note 119 (discussing authors' jurisprudential classification of this opinion).

136. See MACKINNON, *supra* note 132, at 246 (asserting that "women are socially disadvantaged in controlling sexual access to their bodies").

137. See MACKINNON, *supra* note 132, at 246.

138. See MACKINNON, *supra* note 132, at 246 (declaring that compelled motherhood is form of sexual inequality); Catharine A. MacKinnon, *Reflections on Sex Equality Under the Law*, 100 YALE L.J. 1281, 1319-20 (1991) ("Because pregnancy can be experienced only by women, and because of unequal social predicate and consequences pregnancy has for women, any forced pregnancy will always deprive and hurt one sex only as a member of her gender.").

139. See MACKINNON, *supra* note 132, at 247. See generally Nadine Strossen, *In Defense of Freedom and Equality: The American Civil Liberties Union Past, Present and Future*, 29 HARV. C.R.-C.L. L. REV. 143 (1994). Professor Strossen, who is a former president of the ACLU, asserts that legal liberalism's opposition of radical feminists' drive to censor pornography is twofold:

First, they contravene free speech principles. Second, they undermine women's equality rights by giving government officials a powerful tool for suppressing works by and about feminists and lesbians; by perpetuating demeaning stereotypes about women, including that sex is bad for us; by perpetuating the disempowering image of women as victims; by distracting us from constructive approaches to reducing discrimination and violence against women; and by undermining free speech, thereby depriving feminists of a powerful tool for advancing women's equality.

Id. at 151 (footnote omitted).

140. MACKINNON, *supra* note 132, at 247.

141. MACKINNON, *supra* note 132, at 195-214.

142. See American Booksellers Ass'n v. Hudnut, 771 F.2d 323, 332 (7th Cir. 1985) (ruling anti-pornography ordinance violated First Amendment), *aff'd*, 475 U.S. 1001 (1986). Radical feminism, however, may have earned a victory with the Supreme Court's unanimous acceptance of sexual harassment as an impermissible form of sex discrimination. See *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 75 (1986) (acknowledging that sexual harassment is actionable as sex discrimination under Title VII); Sunstein, *supra* note 109, at 829 (crediting MacKinnon for providing intellectual basis for victory in *Vinson*, although her work may reflect more of liberal

D. *Post-modern Feminism*

Post-modern feminists reject all suggestions that there is a universal essential woman or female experience that can serve as a measure of society's legal mistreatment of women.¹⁴³ They assert that the originators of the women's movement are largely white, middle and upper-middle class, heterosexual, college-educated women.¹⁴⁴ Post-modernists criticize the movement for focusing on such individuals and allowing their values, concerns, and experiences to define the feminist movement.¹⁴⁵ Liberal, cultural, and radical feminists are all criticized for having created an essential female whom they use to understand women's diverse experiences and problems, putting forth the solutions of her problems as the solutions to the problems of all women.¹⁴⁶

Critical race feminism, with Professors Angela Harris, bell hooks, and Kimberle Crenshaw serving as that movement's leading spokespersons,¹⁴⁷ provides the most graphic example of post-modern feminism. Professor Harris notes that, although white feminists decry their inability to cause the male-dominated legal system to treat rape with appropriate seriousness, their cause is simpler than that of the black rape victim who experiences the sting of both racism and gender bias as she approaches the legal system.¹⁴⁸ While praising the work of radical feminists such as Professor MacKinnon, Professor Harris criticizes it for relying on "gender essentialism—the notion that a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience."¹⁴⁹

Professor Patricia Cain notes that a significant problem, which post-modernism poses for feminist jurisprudence, is that it deprives

rather than radical perspective).

143. For a brief thoughtful discussion of this school of jurisprudence, see Cain, *supra* note 6, at 838-41 (observing that post-modern feminists reject notion of "essential woman"); Crain, *supra* note 109, at 1191-92 (classifying post-modernist jurisprudence as critical race feminist jurisprudence). Although both Cain and Crain use different labels, they are classifying the same group of legal thinkers.

144. See Crain, *supra* note 109, at 1191.

145. See *supra* note 143 and *infra* notes 146-50 and accompanying text (discussing views of post-modern feminism).

146. See *supra* note 143 and *infra* notes 147-50 and accompanying text (examining post-modern feminists' criticism of liberal, cultural, and radical feminism).

147. See Cain, *supra* note 6, at 839; Crain, *supra* note 109, at 1191-92.

148. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 590-615 (1990) (attacking notion of "essential woman" by introducing experience of black women).

149. *Id.* at 585.

feminist jurisprudence of the abstraction and generalization so essential to much theory.¹⁵⁰ The embracing of the realities of all women—old and young; rich and poor; black, white, yellow, and brown; heterosexual and lesbian; as well as educated and uneducated with all possible permutations and combinations—will make it difficult, Professor Cain asserts, to build a unified theory that women can use to further their cause.¹⁵¹

II. METHODOLOGY

We decided to measure the validity of some of the claims of the cultural feminists and, to the extent that they are related, of the other schools of feminist jurisprudence by analyzing polling data on two significant redistributive justice issues: (1) support for social spending and (2) support for tax fairness.¹⁵² Given cultural feminist assertions about the potential impact of the ethos of care for changing substantive law and the profession and their emphasis on women's heightened appreciation of our connectedness and responsibility toward one another, we fully anticipated that women would be more supportive than men of redistributive justice in the form of social spending and tax fairness measures. Such a result, we believed, would be consistent with cultural feminists' claims that concerns about connectedness and communitarian values should manifest themselves in support for changes in our laws. In addition to determining the impact of gender on opinions about redistributive justice issues, we were also interested in determining whether support for feminism would have a significant impact on respondents' level of support because we believed that this might have some impact on the feminist orientation of our study.

150. See Cain, *supra* note 6, at 839 (recognizing that theories all require some level of "abstraction and generalization").

151. See Cain, *supra* note 6, at 839 (arguing that feminists must unite behind single theory to fight oppression).

152. In the initial phases of our research, using Harris Poll data, we sought to determine whether there were significant differences between the attitudes of men and women with respect to the principle of a progressive rate structure for income taxation. Seven different polls from 1948 to 1990 contained valid questions on this issue.

Analysis of the data indicated that there was no statistically significant difference between the attitudes of men and women on this issue. Because Harris Poll data would not allow us to make the type of regression analysis that we wished to carry out on a series of issues using a group of variables key to our analysis, it was necessary for us to conduct original research on a national poll. It is significant, but not surprising, that the Harris Poll data referred to above is consistent with the findings of our study.

Harris Poll data is available at the Institute for Research in Social Sciences at the University of North Carolina at Chapel Hill.

The data used in our analysis was generated by the Institute for Research in Social Science of the University of North Carolina at Chapel Hill. In the fall of 1992, the Institute conducted an extensive national telephone poll, the 1992 Southern Focus Poll, which employed random digit dialing. The poll in question oversampled in the South.¹⁵³ To correct for the oversampling, responses were weighted to reflect a national random sample of persons aged eighteen or older living in households.

To test attitudes regarding redistributive social spending, we chose six issues that have figured prominently in national debate during the past few decades. Respondents were asked the following:

The government is being asked to pay for many different kinds of programs these days. People disagree about how fair it is to ask taxpayers to support some of them. Would you say it is very fair, somewhat fair, somewhat unfair or very unfair to spend government money on safe houses for victims of spouse abuse?

Subsequent questions addressed: (1) housing for the homeless; (2) job training for the unemployed; (3) medical care for AIDS patients; (4) loans for college students; and (5) preservation of endangered species. Responses on these six spending questions were combined to form an index of spending fairness. A response of "very unfair" was given a numerical weight of one, "somewhat unfair" was weighted two, "somewhat fair" was weighted three, and "very fair" was weighted four. The resulting potential index range was from six to twenty-four for each person polled.¹⁵⁴

153. The sample included 4054 southern and 2804 nonsouthern numbers, with 4920 numbers actually called. Interviews were completed for 46.8% of the households reached with an eligible respondent. An interview was not completed where a respondent refused to answer all questions or the interviewer or respondent had to terminate for a reason such as time constraints or a call was cut off. The number of households contacted and the response rate were within normal parameters for a reliable survey. For more details about the survey, contact the Institute of Research in Social Science at the University of North Carolina at Chapel Hill.

154. Responses were somewhat skewed toward positive perceptions. For example, ignoring "don't know" responses, those answering "very fair" ranged from 37.3% for spending on saving endangered species to 59.4% for spending on job training for the unemployed. The mean of spending index for all respondents was 19.89, with a standard deviation of 3.23 and an alpha of 0.73. Deleting the endangered species item increased the alpha level modestly from 0.7338 to 0.7339 and deleting any other item decreased it significantly, thus justifying retention of all items in the index.

The alpha value is used to test whether several different items in a survey are reliably measuring a similar underlying concept. The alpha is placed on a scale of 0 to +1.0. A high alpha indicates that the respondents are responding in a similar manner to the items in a survey that the analysts believe to be related. An alpha as high as that produced by the six tested items is very positive and indicates that the six items reliably tap a common underlying attitude on social spending. See generally Lee J. Cronback, *Coefficient Alpha and the Internal Structure of Tests*, 16 *PSYCHOMETRIKA* 297 (1951) (discussing "alpha test").

The following chart summarizes the responses on each of the six issues. All figures represent the percentages of respondents who chose a particular response.

To test attitudes regarding redistributive taxation, we chose 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. Responses from the two items were combined to create a tax fairness index. Responses strongly supportive of redistributive tax policies¹⁵⁵ were assigned a value of four, those that merely supported such measures were assigned a value of three, whereas those who were opposed were

Table A

	Very Fair	Somewhat Fair	Somewhat Unfair	Very Unfair	Don't Know and No Opinion
Safe Homes for Abused	40.5	40.0	10.7	4.1	4.7
Housing for Homeless	38.8	43.5	9.6	5.2	2.9
Job Training	54.1	35.3	6.1	2.5	2.0
AIDS Medical Care	38.1	39.2	9.4	7.5	5.8
College Loans	53.1	35.6	5.8	3.2	2.3
Endangered Species	30.9	40.6	13.2	9.6	5.7

Following conventional procedures, "don't know" and "no opinion" responses were dropped to analyze data with the result that percentages referred to elsewhere in the study will vary slightly from those reported above. "Don't know" and "no opinion" responses, of course, are declared missing data in the regression results.

155. The two item tax index generated an alpha of only 0.32. This indicates that the two core issues around which tax policy has been debated over the last decade do not reflect, as well as our spending fairness measure, a single dimension of citizen orientation toward public policy. Although public policy analysts typically view these two issues as significant individual features of the redistributive tax issue, the low alpha value indicates that the public recognizes only a modest relationship between the two issues. Weak public knowledge about tax issues most likely accounts for this.

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 11, 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). We also looked at each of the individual items comprising that index.

A response of "very fair" to the progressive tax question or "strongly disagree" with capital gains preference was deemed to be strongly supportive of redistributive taxation and was assigned a score of four. Responses of "somewhat fair" or "disagree" on the respective issues were deemed to be somewhat supportive of redistributive efforts and assigned a score of three. Responses of "unfair" or "agree" on the respective issues were assigned a score of two while responses of "very unfair" or "strongly agree" on these issues were assigned a score of one.

The tax fairness index had a mean value of 5.10 and a standard deviation of 1.48. In responding to the progressive tax question, 20.3% of the respondents answered "very fair," 36.5% answered "somewhat fair," 22.8% answered "somewhat unfair," 11.8% answered "very unfair," and 5.5% had "no opinion." In addressing the capital gains question, 17.9% answered "strongly agree," 25.3% answered "agree," 21.2% answered "disagree," 5.5% answered "strongly disagree," and 30.2% had "no opinion." Following standard practices, the "no opinion" responses were declared missing data when statistical analyses were conducted.

assigned a value of two, and those strongly opposed were assigned a value of one. The resulting potential index ranged from two to eight. To test opinions regarding tax progressivity respondents were asked the following:

The federal income tax is based on the principle that people with higher incomes not only pay more taxes but also a greater percentage of their incomes in taxes. Do you think this is very fair, somewhat fair, somewhat unfair or very unfair?

A second question focused on the capital gains issue and asked:

Some say that capital gains—that is the profits people make from the sale of investment property, stocks and so forth—should be taxed at a lower rate than their income from wages and interest. Do you strongly agree, agree, disagree, strongly disagree or have no opinion?

Our central theoretical interests concerned gender and feminism.¹⁵⁶ Our indicator of feminist identification for males and females was constructed using three questions. Respondents were asked whether they thought of themselves as feminists.¹⁵⁷ Those

156. In our study, gender is a dummy variable scored one for women and zero for men. A dummy variable is defined as "a nominal-level variable coded with values of 1 and 0 and used in a regression." KENNETH J. MEIER & JEFFREY L. BRUDNEY, *APPLIED STATISTICS FOR PUBLIC ADMINISTRATION* 444 (3d ed. 1992).

157. Given the potential problems with measures based on self-identification, we initially examined a more complex measure of feminist identification. This involved combining our present measure with another based on questions about whether one was proud of the accomplishments of women. In analyzing the results, however, we found the use of the more complex measure reduced our sample size due to missing responses on the "pride" component of the index. Therefore, we used the simpler measure based on self-identification employing self-report data.

Does this mean that our use of self-identification is problematic? Two reasons suggest not. First, when the analyses presented here were re-run using the more complex measure of feminist identification, albeit with fewer observations, they produced in all cases essentially the same findings. Thus, our simpler measure based solely on self-report does not seem to bias the responses or their relationships with attitudes about public policy.

Second, this finding conforms well with previous work on measures of feminist identification based on self-report data when such measures are augmented, as ours is, with information about intensities of preferences. Thus, Professor Pamela Johnston Conover reports that her measure, which is similar to ours,

is very strongly correlated with positive affect (as measured by feeling thermometers) toward women (Pearson's $r=.33$), the women's movement ($r=.53$), and the women's liberation movement ($r=.50$). It is also positively related to aspects of group consciousness. In particular, a strong feminist identity is associated with the position that the government should "make every effort to improve the social and economic position of women" ($r=.28$), and that it is extremely important that the government act now on that issue ($r=.33$). Finally, a strong feminist identity is also positively related to having a sense of interdependence with other women; that is, strong feminists believe that if "women were more actively involved in running the affairs of this country" it would increase the respect that they personally receive ($r=.28$). Thus, the measure of feminist identity taps the underlying concept more directly than previous measures, and it is correlated in the expected fashion with crucial criterion variables.

responding affirmatively were asked if they would describe themselves as strong or not so strong feminists. Those responding negatively were asked if they were strongly opposed, not so strongly opposed, or not at all opposed to feminism.¹⁵⁸ Curiously enough, when responses on these questions were compared with respondents' gender, there was only a weak correlation between gender and feminist identification.¹⁵⁹

The models used to assess the impact of gender and feminist identification on perceptions of redistributive fairness in taxation and social spending also included a number of other control variables.¹⁶⁰ The demographic variables included age,¹⁶¹ education,¹⁶² income,¹⁶³ and race.¹⁶⁴ We also created control variables for political ideology¹⁶⁵ and political party identification.¹⁶⁶ To determine

Pamela Johnston Conover, *Feminists and the Gender Gap*, 50 J. POL., 985, 991-92 (1988). For both reasons, then, self-identification should provide a valid measure of the concept we are attempting to tap in this analysis.

158. The responses were combined to create a five-item indicator of feminist identification. "Strong" feminists (11.06% of the respondents to this question) were assigned a value of five; a value of four was assigned to "not so strong" feminists (26.83% of respondents); a value of three was assigned to respondents who responded negatively but who indicated that they were not opposed to feminists (30.58% of respondents); a value of two was assigned to those who were "somewhat opposed" to feminists (25.81% of respondents); and a value of one was assigned to those who were "strongly opposed" to feminists (5.72% of respondents).

159. Gender and feminist identification indicators were so weakly correlated that they produced a Pearson correlation coefficient of only 0.085. A Pearson correlation coefficient ranges between -1.0 and 1.0 and is used to indicate the relationships between the two items. A score of 1.0 would indicate perfect positive correlation between two items (e.g., all women are strong feminists and all men are strongly opposed to feminism). A value of -1.0 indicates a perfect negative association between two variables. A score of zero indicates random correlation. The reported score of 0.085 indicates very weak positive correlation between gender and feminism. See THOMAS H. WONNACOTT & RONALD J. WONNACOTT, *INTRODUCTORY STATISTICS* 407-16 (5th ed. 1990) (discussing Pearson correlation coefficient).

160. Control variables are variables or categories, such as age or income, which are not the primary focus of inquiry, but are introduced to insure that the key relationship is not spurious. In our study, for example, age, education, liberalism, income, race, and party identification are the control variables. The variables that are the focus of our study are gender and feminism and the two multiplicative interaction variables of gender-feminism and gender-party identification. See *infra* notes 167-70 (explaining concepts of multiple regression analysis and multiplicative interaction).

161. The age variable was based on the year of birth.

162. Respondents were asked if their highest year of completed school was: (1) less than grade nine; (2) grade nine through eleven; (3) high school graduate; (4) some college; (5) four-year college graduate; or (6) more than four-year college graduate.

163. Annual income was coded in \$10,000 increments until \$60,000 and more than \$60,000 per year.

164. Respondents were coded as white or non-white.

165. Respondents were asked to indicate if they were a: (1) strong conservative; (2) not so strong conservative; (3) moderate leaning conservative; (4) moderate; (5) moderate leaning liberal; (6) not so strong liberal; or (7) strong liberal. In creating variable values, high values were assigned to liberalism and low values to conservatism.

166. Respondents were asked to indicate if they were a: (1) strong Republican; (2) not so strong Republican; (3) Independent leaning toward Republican; (4) Independent; (5) Independent leaning toward Democrat; (6) not so strong Democrat; or (7) strong Democrat.

if male and female feminists had different perceptions of redistributive fairness in taxation and spending, we created a multiplicative interaction variable¹⁶⁷ designated as gender-feminist identification.¹⁶⁸ Given Professors Pamela Johnston Conover and Virginia Sapiro's finding on the interaction of party identification and gender in attitudes about national defense, we also included such an interaction variable in our models.¹⁶⁹

We employed multiple regression analysis¹⁷⁰ to interpret the

In creating dummy variable values, high values were assigned to Democrat respondents and low values to Republican respondents.

167. Interaction variables are produced by multiplying the values of two or more independent variables. The resulting product is then included as a separate independent variable in the regression model along with the variables from what it is composed. See WILLIAM DALE BERRY & STANLEY FELDMAN, *MULTIPLE REGRESSION IN PRACTICE* 51-57, 64-72 (1985) (discussing interpretation of interaction terms).

168. Multiplicative interaction terms allow us to assess the non-additive impact of two or more variables in the model. A standard regression model might include gender (scored one for women and zero for men) and feminism as separate and distinct independent variables. A standard model may also assume that the relationship of the targeted variables to a dependent variable, such as support for redistributive spending, is merely additive. Other models may assume that the coefficient for the feminism variable should be the same irrespective of whether the respondent was a man or a woman. By including in our model a multiplicative term, formed by multiplying gender by feminism, in addition to the gender and feminism variables, we were able to test for differences in the impact of feminism on support for redistributive spending between men and women. The impact of feminism for men is indicated by the feminism coefficient while the impact of feminism for women is the sum of the feminism and multiplicative interaction coefficients. Thus, the multiplicative interaction coefficient indicates the difference in the impact of feminism on support for redistributive spending between men and women. See BERRY & FELDMAN, *supra* note 167, at 51-57, 64-72 (1985) (discussing interaction terms).

169. See Pamela Johnston Conover & Virginia Sapiro, *Gender, Feminist Consciousness, and War*, 37 AM. J. POL. SCI. 1079, 1087 (1993) (discussing interaction of party identification and gender on attitudes about public policy). In short, the authors find that partisanship has a far more significant impact on men's attitudes about war than it does on women's attitudes. *Id.*

170. Multiple regression analysis is a technique used to estimate the independent or distinct impact of one independent variable on responses to a given question or series of questions in models employing a number of independent variables, such as age, gender, income, etc.

Ordinary least squares (OLS) regression was used to analyze the social spending index and the tax fairness index. Logistic regression was used to analyze the individual items that make up each index. For example, homes for the homeless and capital gains are two items that comprise the social spending index. OLS is the regression model most familiar to students who have been exposed to statistics. Unfortunately, the OLS model assumes that dependent variables are measured at the interval level and several of our dependent measures have a limited number of responses typical of nominally measured variables. In such cases, it is more appropriate to use an estimation technique that does not assume an interval level of measurement. Logistic regression is one such technique, but one that produces estimates that are capable of interpretation in the same manner as standard regression results. See generally JOHN H. ALDRICH & FORREST D. NELSON, *LINEAR PROBABILITY, LOGIT, AND PROBIT MODELS* (1984) (providing discussion of estimation of models with limited value dependent variables).

Collinearity was assessed by regressing each of the independent variables on the remaining independent variables. Only in cases where variables were included both independently and in interaction with other variables did the resulting coefficients of determination exceed 0.30. In all other cases, the independent variables were not closely related to one another. This was true even in cases where we might have expected stronger relationships. Feminist identification, for example, with a Pearson coefficient of 0.31, was only weakly related to ideological liberalism.

responses that we received. We separately analyzed responses to each of the six items in our social spending index: (1) safe houses for abused spouses; (2) housing for homeless; (3) job training for unemployed; (4) medical care for AIDS victims; (5) college loans; and (6) endangered species preservation. We then analyzed the responses to these six issues when combined to create a composite social spending index. We also separately analyzed responses to the two items in our tax fairness index: (1) progressive taxation; and (2) the capital gains preference. Finally, we analyzed the responses to these two issues when combined to create a composite tax fairness index.

III. FINDINGS

In the materials that follow, we discuss: (1) the general nature of our findings; (2) a detailed analysis of our findings on redistributive spending; and (3) a detailed analysis of our findings on tax fairness.

A. *General Conclusions*

The principal focus of our study was on the impact of gender and feminist identification on attitudes toward redistributive social spending and taxation. In general, our analysis indicated that men are somewhat more supportive than women of redistributive tax measures whereas women are somewhat more supportive than men of social spending. The differences between the sexes on these issues, however, were surprisingly small. Our data did reveal that male and female feminists were modestly more supportive of redistributive taxation and social spending than were non-feminists. Male feminists proved to be stronger supporters of these issues than did female feminists.¹⁷¹ As in the case of gender, our comparison involving feminists and non-feminists as well as our comparison involving male and female feminists revealed differences in attitudes that were only of modest magnitude. In general, in the area of redistributive justice, our study did not bear out the dramatic claims made by proponents of cultural feminist jurisprudence of the potential impact of gender

In the models with interactions, gender proved to be the central variable producing collinearity, with an auxiliary R-square value of 0.94. To assess the impact of collinearity, separate models were run by gender. The results of these analyses were essentially the same as those for the full sample, suggesting that any collinearity arising from the interactions was not obscuring the relationships identified in the regression results.

171. Because multiple regression analysis was employed in analyzing the data and our variables included liberalism, this difference cannot be accounted for by the explanation that male feminists could be expected to be more liberal than female feminists.

difference on a redesigned legal system.¹⁷² Moreover, the modest positive impact of feminism on attitudes favoring redistributive taxation and spending, while somewhat supportive of the radical feminist position, cannot be viewed as a validation of that school of jurisprudence given the modest nature of the empirical support.

In the following materials, we explain in greater detail our findings in the areas of redistributive social spending and taxation.

B. *Redistributive Social Spending*

Our analysis of redistributive social spending issues produced a blend of expected and unexpected results.¹⁷³ When we explored the influence of control variables,¹⁷⁴ we were able to conclude with a high degree of confidence that strong support for social spending was positively associated with liberalism, Democratic party identification, and with a decrease in age.¹⁷⁵ Curiously, non-whites were less supportive of social spending than were whites, although the

172. See *supra* notes 30-108 and accompanying text (discussing views of cultural feminists suggesting that shifting from current male-designed legal system based on "ethos of rights" to female-dominated "ethos of care" system would result in increased spending and support for social issues).

173. The results for the index of spending fairness are presented in the first column of Table 1. See *infra* Table 1, at 145. With a coefficient of determination, or R-square value, of 0.24, the model does only a modest job of accounting for variance in the index. The regression coefficients are of the expected sign and are highly significant ($p < 0.05$) for three of the control variables; support for redistributive social spending increases with liberalism and Democratic party identification and decreases with age. The coefficient of determination provides a means for assessing the explanatory value of a regression model. The possible scores can range from 0 to 1.0. The closer the score is to 1.0, the more the independent variables account for variance in the dependent variable of the model. In actuality, scores close to 1.0 are rare. An R-square value of 0.24 indicates that the regression model accounts for 24% of the variance in the spending index. See MICHAEL S. LEWIS-BECK, *APPLIED REGRESSION: AN INTRODUCTION* 20-25 (1980) (explaining applied regression analysis).

The p value is an indicator of the confidence one can place in the results. A $p < .05$ indicates that there is a less than one out of twenty chance that the reported regression coefficient of a given independent variable is actually zero whereas $p < .15$ indicates the chance that the regression coefficient is actually zero is only less than three out of twenty. Normally, statisticians look for $p < .05$ before feeling confident of results.

None of the regression coefficients of the other control variables are significant at the usual criterion levels. As mentioned above, the race coefficient somewhat surprisingly indicates that whites are slightly more supportive of redistributive social spending than non-whites. See *infra* note 175 and accompanying text. But while larger than its standard error, the estimate is not discernible at even the $p < 0.15$ level. With this exception, however, these relationships are, as expected, given conventional interpretations of the politics of spending.

174. The control variables are those identifiers that are assumed to be unrelated to gender and feminism, such as age, education level, political ideology, income, race, and political party identification.

175. See *infra* Table 1, at 145, lines 1, 3, and 6. Among the control variables, the regression coefficients are of the expected sign and significance for liberalism, Democratic party identification, and age.

difference became less significant if spending on endangered species was dropped from the study.¹⁷⁶

Focusing our attention on the principal gender-feminist orientation of our study, our data revealed a number of statistically discernible relationships. For example, we were able to conclude with a high degree of confidence that women are more supportive than men of redistributive social spending.¹⁷⁷ Similarly, we concluded, also with a high degree of confidence, that feminists are more likely than non-feminists to be supportive of redistributive social spending.¹⁷⁸ Although our data did indicate that female Democrats are somewhat more supportive of redistributive social spending than are male Democrats, because of weak statistical relationships, we are unable to have substantial confidence that such a result would be replicated in another comparable sampling.¹⁷⁹ One interesting impediment to an emerging picture of gender- and feminist-based support for redistributive social spending was the fact that our data revealed that women feminist identifiers are far less supportive of social spending than are male-feminist identifiers.¹⁸⁰

In general, however, we conclude that gender and feminist identification seem to have a modest positive relationship to attitudes about redistributive social spending. Analysis of the impact of gender and feminism on each of the six individual items that comprise our redistributive social spending index produced several items worthy of note. While women are more supportive than men of spending in all six categories, their support is strongest in the cases of safe houses for abused spouses, AIDS, and college loans, and somewhat less so in the case of housing for the homeless.¹⁸¹ Both

176. See *infra* Table 1, at 145, line 5. Unfortunately, our sample is not large enough to enable us to distinguish among different non-white racial groups in their support for social spending.

177. See *infra* Table 1, at 145, line 7. The gender regression coefficient estimate of 2.173 indicates that women are more supportive of redistributive social spending than men, and the coefficient is significant at the $p < 0.01$ level.

178. See *infra* Table 1, at 145, line 8. Feminist identification has a significant regression coefficient of 0.918, indicating that feminists are more likely to support redistributive spending than non-feminists.

179. See *infra* Table 1, at 145, line 10. The gender-party identification regression coefficient was also positive, indicating that female Democrats are somewhat more likely to support redistributive social spending than male Democrats. However, because the interaction coefficient for this data is smaller than the standard error, we cannot be certain that another sampling would produce comparable results.

180. The data in Table 1, *infra*, at 145, line 9, indicates that the gender-feminist interaction coefficient has a negative partial slope of -0.635, which is significant at the $p < .01$ level.

181. See *infra* Table 1, at 145, line 7. The gender estimate of the regression coefficients in all six cases is positive, indicating greater support of such spending by women. This result is significant at least at the $p < 0.10$ level in the four cases identified above in the text.

men and women feminists are positive supporters of redistributive social spending in all six categories.¹⁸² When we separately analyzed the six components of our social spending index, based on gender-party identification, we found that members of the opposite sex who belonged to the same political party demonstrated weak, mixed levels of support for each of the separate items.¹⁸³ As in the case of the general spending index, support by women-feminist identifiers for each of the six separate spending issues was less than the support in each category coming from male-feminist identifiers. The difference in support levels was greatest in the case of AIDS and to a lesser extent for college loans and safe houses for abused women.¹⁸⁴ In general, the separate spending issues generated conflicting messages about the influence of gender and feminist identification on support for redistributive spending.

To provide more meaning to this seemingly conflicting data, we compared the responses of the average woman to that of the average man, and that of the average feminist to that of the average non-feminist. To make these two comparisons relevant to the data produced for our entire sample, we calculated the predicted mean or average response on our spending index for several hypothetical sets of respondents.

We first performed this task for the "average" respondent of the survey.¹⁸⁵ On our spending scale index, which ranged between six

182. See *infra* Table 1, at 145, line 8. All the feminist identification regression coefficients for the six component issues are positive and all are significant at the $p < 0.01$ level.

183. For example, although male Democrats were more supportive of spending for job training for the unemployed and for endangered species than were female Democrats, this was counterbalanced by modestly stronger support by female Democrats for the homeless and college loans. See *infra* Table 1, at 145, line 10.

Not surprisingly, given the weak results reported for the composite spending index, the gender-party identification regression coefficients reported in Table 1 are mixed in sign across the six categories. See *supra* note 173 and accompanying text. Only one coefficient, job training for the unemployed, is discernible at even the $p < 0.10$ level. See *infra* Table 1, at 145, line 7. A negative coefficient for job training indicates that female Democrats were less supportive of this type of spending than were male Democrats, an unexpected result.

184. See *infra* Table 1, at 145, line 9. Negative gender-feminist correlation coefficients indicate that male feminists are more supportive of such spending than are female feminists. The difference between the sexes is statistically most significant in the case of support for AIDS victims, where it is discernible at the $p < .01$ level. Also statistically significant was the greater support by male feminists for spending on college loans and safe houses for abused spouses. Both were discernible at the $p < .05$ level.

185. To be more precise, the hypothetical scenarios reported here, as well as the fairness index, were created in the following manner: to establish a mean or average prediction of the value of a given index, values of all the independent variables were set at their observed population means. These mean values were then multiplied by the regression coefficients reported for that model as reported in Table 1, *infra*, at 145. The products were then summed. The total represents a predicted mean for the dependent variables. The very modest differences between the actual and predicted mean values reported in Figures 1 and 2, *infra*, at 147-48

and twenty four, the average response was determined to be 19.97. When we performed comparable calculations for a hypothetical all-male sample and a hypothetical all-female sample, the relevant numbers were 19.87 and 20.08 respectively. The results of those comparisons are shown in Figure 1 in the appendix.¹⁸⁶ While these results reinforce our earlier conclusion that women are more supportive than men of redistributive social spending, the magnitude of the difference is quite small. This can be demonstrated by the following. The composite (combined male and female) social spending index, which generated a value of 19.97, produced a standard deviation¹⁸⁷ of 3.23. Moving to an all-female world with an index of 20.08 would shift the average mean only 0.11, or 3.41% of the standard deviation of the average respondent (both male and female) index. In other words, an all-female world—all else being the same—would be unlikely to be dramatically more supportive of social spending programs than our existing male-female world.¹⁸⁸ Comparing the all-male index of 19.87 with the all-female index of 20.08 also produces interesting results. Moving from an all-male to an all-female sample shifts the mean of the spending fairness index by only 0.21, or 6.5% of the standard deviation for the entire sample. From this we conclude that the support for social spending in an all-female

(compare S1 and S2 in the two figures) indicate that our calculated predicted means well match the actual observed mean values of the two summary dependent variables.

Our hypothetical all-male, all-female, high feminist, low feminist, Amazon, and Neanderthal samples (terms created by us) were created in the same manner, but with one exception. In each case, we systematically altered the value of gender, feminism, or both, prior to multiplying those values by the regression coefficients reported in Tables 1 and 2, *infra*, at 145 and 146. For example, instead of multiplying the reported regression coefficient for gender in the spending redistribution index (2.175) by the observed mean gender score of 0.50 (indicating a sample comprised of 50% women and 50% men), it was multiplied by a value of 1.0, indicating an all-female world. The resulting product was then summed with the products of the other independent variable values and their regression coefficients to produce a predicted mean value for the spending redistribution index for a hypothetical world where women comprised the entire population but all else—education, age, income, and so on—remained the same. While somewhat artificial, such simulations allow us to assess the impact of changes in value of one variable on a given dependent variable while controlling for the impacts of other variables.

186. See *infra* Figure 1, at 147, lines S1, S2, S3.

187. In a normally distributed population, 68.26% of all cases will fall within plus or minus one standard deviation of the mean, 15.87% will exceed the mean value by more than one standard deviation, and 15.87% of all cases will have values that are more than one standard deviation below the mean. See HUBERT M. BLALOCK, SOCIAL STATISTICS 99-101 (2d ed. 1972). The standard deviation here is the observed standard deviation of the spending index from the actual sample.

188. Radical feminists may assert that this merely indicates that most women have bought into male values and that the opinions of women uninfluenced by men would be quite different from the female opinions included in our survey. Unfortunately neither that proposition nor its opposite is capable of empirical proof.

world would not dramatically differ from the level of support in an all-male world, as improbable as either scenario may be.

We next measured the impact of both stronger and weaker feminist values on our observed mean. We sought to create, through statistical manipulation, a hypothetical world where the impact of all other independent variables, such as income, age, and so forth, on our composite social spending index would remain constant at their present levels but the impact of feminism would increase markedly. We did this by creating a social spending index where the variables representing the impact of all independent variables other than feminism were set at their present observed mean levels but the impact of feminism was set at one standard deviation above its observed mean. The result of making our existing world dramatically more feminist was to produce a redistributive spending support index of 20.64, a result that shifts our baseline mean index only 0.67, or 20.74% of its actual standard deviation.¹⁸⁹

To measure the hypothetical impact of a markedly less feminist world, we left all other variables at their observed mean levels and set the value of the feminist variable one standard deviation below its observed mean. This technique, in essence, provided us with results that would be produced if our world became markedly less feminist but otherwise remained as it is at present. These calculations resulted in a redistributive spending index of 19.30 and shifted the index only 0.67 from its predicted mean, or 20.74% of its actual standard deviation.

When we compare the index of our markedly less feminist world (19.30) with the index of our markedly more feminist world (20.64), we observe that although strong feminist identifiers are more supportive of redistributive social spending than are strong non-feminists, the difference, only 41.49% of the actual standard deviation for our sample, is not great, especially when one considers the rather extreme nature of the assumptions made to produce this result.¹⁹⁰

To further analyze the impact of both gender and feminism on support for redistributive social spending, we created a predicted spending index mean for women, which reflects greater feminist values than the mean of those included in our study. We did this by employing the same technique described above. We created an entirely female mean sample and set feminist identification at one standard deviation above its observed value while holding all other

189. The results of these calculations are reported *infra* Figure 1, at 147, lines S1, S4.

190. See *infra* Figure 1, at 147, lines S4, S5.

variables at their means. This produced a predicted social spending index score of 20.39, which we refer to as the "amazon index."¹⁹¹ We then employed the same technique to create a spending index for men, which dramatically reduced the impact of feminism on the male index. We did this by setting the variables for feminist identification for our male hypothetical sample at one standard deviation below its observed mean but leaving all other variables at their observed means. This produced a social spending index value of 18.84, which we refer to as the "neanderthal index."¹⁹²

The difference between the predicted amazon index and the neanderthal index is only 1.55, or 47.98% of the magnitude of the actual standard deviation of the spending fairness index. The difference between the predicted spending index value for all respondents, 19.97, and the amazon index, 20.39, is only 0.42 or 13% of the actual standard deviation for the index of all average respondents.¹⁹³ As noted in our prior comparison, this difference also is not so great especially when one considers the extreme and utterly unreal nature of the assumptions that are necessary to produce it. Therefore, we conclude that the net influence of gender and feminist identification, even when we assumed rather extreme scenarios to assess their impact, is not great, especially considering the strong claims often made for them.

C. Tax Fairness

Our analysis of the tax fairness responses also produced some surprising and counterintuitive results.¹⁹⁴ Some of these results were related to our study of the impact of gender and feminism, while others were not. For example, although support for progressivity and opposition to preferential rates for capital gains are often viewed by

191. See *infra* Figure 1, at 147, line S6. We coined the term "amazon index" as an editorial convenience.

192. See *infra* Figure 1, at 147, line S7. We coined the term "neanderthal index" as an editorial convenience.

193. See *infra* Figure 1, at 147, lines S1, S6.

194. The results of our study are reported in Table 2, *infra*, at 146. With a coefficient of determination, or R-square value, of only .146, our study provides only a very modest attempt of accounting for variance in the index.

Among the control variables, regression coefficients incorporating only income and party identification provide statistically significant and highly reliable information. These coefficients both indicate that Democrats and low-income individuals are likely to be strong supporters of tax fairness issues. In both cases, the regression coefficients were significant at the $p < 0.01$ level.

The regression coefficient for race indicated that whites were more likely than non-whites to support tax fairness. With a $p < 0.10$, however, the results are not as significant as the results for party identification and income level.

public finance analysts as core positions supportive of vertical tax equity, there was only a weak correlation between the positions of a respondent on these two issues.¹⁹⁵ Consistent with our expectations was our analysis of the results related to our control variables. Our analysis revealed that only two of the control variables strongly related to the tax fairness index. With fairly great confidence, we were able to conclude that lower income and Democratic party identification were strongly associated with greater support for tax fairness.¹⁹⁶ A similar result was obtained when separate analysis was made of each of the two separate components of the tax fairness index, support for progressive taxation, and opposition to capital gains preference.¹⁹⁷ In addition, more highly educated individuals, liberals, and white respondents responded with greater support for progressivity than did their opposites.¹⁹⁸

The impact of both gender and feminist identification, the main focal points of our study, on tax fairness issues was very weak.¹⁹⁹ Surprisingly, however, the data did indicate that women are slightly less supportive of tax fairness than men when measured by their responses to the capital gains issue and using our two-factor tax fairness index.²⁰⁰ By a very narrow margin, women indicated greater support for progressive taxation; however, by a slightly wider margin, men indicated greater support for eliminating capital gains preferences.²⁰¹ The impact of feminist identification was uniformly positive, as expected, but only the result using the two-factor tax fairness index was even marginally significant.²⁰²

195. See *supra* note 155 (hypothesizing that minimal public knowledge about tax issues may account for many respondents' lukewarm support).

196. See *infra* Table 2, at 146, lines 4, 6. On the two-factor tax fairness index reported in column one, both income and party identification generated coefficients that were significant at the $p < 0.01$ level.

197. See *infra* Table 2, at 146, lines 4, 6. On both the progressive tax and capital gains issues reported in columns 2 and 3, the income and party identification coefficients were significant at the $p < 0.01$ level.

198. See *infra* Table 2, at 146, lines 2, 3, 5. In all cases the results were significant at the $p < 0.01$ level.

199. See *infra* Table 2, at 146, lines 7, 8. None of these results were significant at even the $p < .15$ level.

200. See *infra* Table 2, at 146, line 7. The greater support by men for these items is indicated by the negative signs of the regression coefficients (-.557 and -.036 respectively). In neither case, however, was the data with respect to gender differences statistically significant and the p values generated did not indicate that there was a strong likelihood of replicating even these modest differences on another study.

201. See *infra* Table 2, at 146, line 7. The gender-based difference, however, was not statistically significant and generated a p value that did not indicate a strong likelihood of replicating even these modest differences in another study.

202. See *infra* Table 2, at 146, line 8. Only the 0.107 regression coefficient for the two-factor tax fairness index is even marginally significant ($p < 0.15$).

The picture became no clearer when we examined our two interactive variables, gender-feminist identification and gender-party identification. Although female feminists were more supportive of tax fairness than male feminists as measured on our two-factor tax fairness index and our capital gains index, only the capital gains index produced statistically significant results.²⁰³ Contrary to our expectations, when compared to their male counterparts, female Democratic party identifiers proved to be less supportive of tax fairness on both the progressive tax index and the capital gains index and, consequently, on the combined two-factor tax fairness index.²⁰⁴ Moreover, the coefficient with respect to the latter index proved to be highly significant.²⁰⁵ Our analysis indicates that, as in the case of the social spending models, the influences of gender and feminist identification are not simple, uniform, or consistent.

To sort out these conflicting patterns, we employed the same simulation techniques used above for redistributive social spending issues.²⁰⁶ Our hypothetical mean respondent on the tax fairness index generated an index value of 5.11 on our scale of two to eight.²⁰⁷ When all variables other than gender were held constant at their mean levels, a hypothetical all-female sample generated a predicted mean tax fairness index value of 4.98. A similar calculation for our all-male sample yielded a predicted index value of 5.27.²⁰⁸

Males thus proved to be more supportive of tax fairness than women. This result, of course, is contrary to the intuitive reaction of cultural feminists. The difference between the male and female indices is only 0.32, or 21.6% of the observed standard deviation of the tax fairness index of 1.48. Shifting from our predicted present world mean with a tax fairness index of 5.11 to an all-female scenario would entail a downward shift of the mean of only 0.16, or 10.81% of the observed standard deviation of the sample. While this indicates that women are less supportive of tax fairness than the general male-female population, the difference is far from profound.

Results more consistent with our expectations were obtained when we calculated predicted tax fairness index values for respondents that

203. See *infra* Table 2, at 146, line 9. The 0.267 regression coefficient on the capital gains issue was significant at the level of $p < 0.05$.

204. See *infra* Table 2, at 146, line 10. Only with respect to the two-factor tax fairness index was this data highly reliable with a $p < 0.01$.

205. See *infra* Table 2, at 146, line 6.

206. See *supra* notes 185-93 and accompanying text.

207. For a discussion of how this value was derived in the spending context, see *supra* note 185 and accompanying text.

208. See *infra* Figure 2, at 148. Compare lines S1, S2 and S3.

reflected greater feminist values than the mean of all those included in our study. As with redistributive social spending, we calculated a predicted mean index value for all respondents but set feminist identification one standard deviation above its observed value and held all other variables at their means.²⁰⁹ When the feminist-adjusted mean index value was multiplied by the regression coefficients reported in the first column of Table 2, a predicted tax fairness index value of 5.28 resulted.²¹⁰ We then created a predicted tax fairness index value that reflected less feminist identification than the mean index produced in our study by holding all variables constant and setting the mean value for feminist identification one standard deviation below its mean. This produced a tax fairness index value of 4.93.²¹¹ These results produced a shift of only 23.64% of the observed standard deviation of the tax fairness index and indicate that, while both male and female feminists are more supportive of tax fairness than are non-feminists, the difference between feminists and nonfeminists is not profound. Moreover, statistically adjusting the predicted tax fairness indices to reflect more or less feminist identification (5.28 and 4.93, respectively) resulted in a shift of only 0.18, or 12.16% of the standard deviation, from the 5.11 tax fairness of our present world. While the differences between these indices are significant, they are far from profound.

As in the case of our spending analysis, we further analyzed the impact of gender and feminism on support for redistributive taxation by calculating amazon²¹² and neanderthal²¹³ indices for tax fairness. We did this by setting feminist identification one standard deviation above its observed value and holding all other variables at their means.²¹⁴ This produced a predicted tax fairness index value of 5.17, which we refer to as the amazon index.²¹⁵ We then created a tax fairness index for men, which dramatically reduced the impact of feminism on the male index, by setting the variable for feminist identification for our hypothetical male mean sample one standard deviation below its observed mean, but leaving all other variables at

209. See *supra* notes 189-90 and accompanying text (explaining use of this technique in social spending portion of article).

210. See *infra* Figure 2, at 148, line S4.

211. See *infra* Figure 2, at 148, line S5.

212. See *supra* notes 190-91 and accompanying text (explaining procedure for calculating amazon index). The resulting amazon index for tax fairness was 5.17.

213. See *supra* note 192 and accompanying text (explaining procedure for calculating neanderthal index). The resulting tax fairness neanderthal index was 5.15.

214. See *supra* notes 191-92 and accompanying text (explaining use of this technique in social spending portion of article).

215. See *infra* Table 2, at 148, line S6.

their observed means. This produced a tax fairness index value of 5.15, which we refer to as the neanderthal index.²¹⁶

The difference between the tax fairness amazon and neanderthal indices (0.02, or 1.35% of the tax fairness standard deviation) is completely inconsequential and statistically insignificant. Moreover, moving from the current world and its mean tax fairness index of 5.11 to the all-woman, strongly feminist scenario shifts the mean upward only 0.06, or 4.05% of its actual standard derivation. Indeed, it is interesting that the predicted means of the two extreme scenarios are both higher than the predicted mean for the total sample as presently realized. In general, we conclude that the net influence of gender and feminist identification cancel each other so that there is virtually no difference between the predictions generated by these starkly different scenarios.

CONCLUSION

The female-oriented ethos of care, with its emphasis on communitarian values, should intuitively result in women being dramatically more supportive of redistributive justice measures than are men. Our data, however, indicate that there is little difference between women and men in their attitudes toward major redistributive justice issues involving tax fairness and social spending. Although women favored social spending to a slightly higher degree than men, they were slightly less favorably disposed toward tax fairness than men. The results are not supportive of the cultural feminist position. Moreover, our data indicated that other variables, such as income, age, party identification, and general support of liberal programs are at least as, and on occasion more, important in predicting support for tax fairness or social spending.

We can offer several possible explanations of the disparity between our results and the observation of cultural feminist psychologists, such as Professor Gilligan, on the differences between male and female behavior in their approaches toward individual personal moral behavior. First, it is possible that while men and women might speak in different voices on the micro-societal level, they may not do so on the macro level. Thus, while men might emphasize autonomy, individual rights, and justice and women might emphasize care, connectedness, and responsibility when forming opinions on moral issues on the interpersonal level, the two genders may speak in the same voice when addressing issues on the national level. Second, the

216. See *infra* Table 2, at 148, line S7.

older psychological studies, from where much of this controversy springs, did not control for differences in education between the sexes. Regression analysis, such as we employed, has the effect of controlling for differences in variables such as education. Once this was done with these older studies, the differences between the sexes evaporated.²¹⁷ Moreover, if differences between the sexes in educational levels or other factors such as income, age, party affiliation, or liberalism account for differences in attitudes toward issues, regression analysis will expose that fact. This likely explains the failure of gender to emerge as a significant factor in determining support for redistributive justice. Third, because women have historically experienced the power of the state as more confining of personal liberties and potential than men have, it is possible that their distrust of government as an arbiter of redistributive justice might mitigate the otherwise likely impact of their ethos of care. This distrust may act to somewhat restrain their natural instincts toward programs that promise care when the government provides that care.

Although our study is helpful in evaluating the legitimacy of cultural feminist jurisprudence in the area of redistributive justice, it provides only modest insight into weighing the claims of competing schools of feminist jurisprudence. Our study provides little, if any, data that is of value on the subject of liberal feminism, although it provides some modest insight into evaluating the claims of post-modern and radical feminism.

If one views the opinions of women feminists as a proxy for an opinion uninfluenced by male domination, it might enable one to make some tentative conclusions regarding the radical feminist perspective. Our analysis indicates that feminism has only a modest impact on the formation of attitudes toward redistributive justice. Moreover, male feminists emerged as more supportive of redistributive justice than female feminists. These facts hardly allow us to conclude that a legal structure that was not dominated by male opinion would be more supportive of redistributive justice than our present system of laws. Radical feminists may criticize the use of a woman's feminist self-identification as a proxy for the undominated woman's position, and we surely must concede that not all female self-identifiers could be classified as not dominated or imprinted by males. Nonetheless, it is in this group of women where one would expect to find such individuals. Given the very modest impact of feminism on

217. See *supra* note 51 and accompanying text (positing that gender affects societal attitudes and individual moral behavior).

shaping women's opinions on redistributive justice, we cannot conclude that women, in a world free of male domination, would significantly provide stronger support for redistributive justice than women provide at present in the existing environment.

Given the demonstrated importance of other factors such as income, age, party identification, and support for liberalism in predicting support for redistributive justice, the post-modern feminists, with their emphasis on the diversity of women's experiences, might draw support from our conclusions. However, because of two main reasons, even they would be hardpressed to point to our data as offering strong empirical support for their philosophy in general. First, the conclusions supported by our data must be limited to the redistributive justice issues studied and cannot be used to generalize about the overall validity of different schools of jurisprudence. Second, given the modest impact of gender and feminism on support for redistributive justice, we cannot conclude that post-modern feminism provides a clear explanation for variations in the levels of support for redistributive justice.

We caution that the primary conclusions that we draw about cultural feminism, and our secondary conclusions about radical and post-modern feminism, are limited to the subject matters included in our survey. We can offer no comments on the validity of the observations of proponents of these schools of jurisprudence in other areas of the law. Moreover, even in the two subject matter areas of our study, tax fairness and social spendings, our data and conclusions are limited in time and to the issues tested. Perhaps, in later generations, gender and feminist identification might prove to be significant in forming opinions on redistributive justice issues that significantly vary from those of the general population. At present, however, that is not the case.

In closing, we wish to present one additional thought. We believe that the methodology and techniques of analysis employed in this study offer significant new opportunities for verifying a variety of theoretical claims. The potential applications of these techniques range far beyond the immediate exercise undertaken in this study. Our society, in general, and the legal profession, specifically, have a keen interest in working to ensure that our social norms reflect the multitude of interests in our increasingly diverse society. Given that goal, we believe that our research demonstrates the need to verify empirically the true opinions of our various national constituencies and to match the resulting data against the claims of theoreticians who seek to speak for various groups. To 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.

Table 1: Spending Fairness Regression Results

Indep. Variables	Spend Index	Safe House	Dependent Variables ¹			Support for AIDS	College Loans	Endang. Species
			Homes Homeless	Job Training				
Age	-.388** (.157) ²	-.172** (.083)	-.072 (.084)	-.014 (.088)	-.232** (.085)	-.287** (.086)	.305*** (.084)	
Education	.168 (.141)	.260*** (.072)	.120# (.074)	.199*** (.076)	-.043 (.074)	.037 (.074)	.052 (.072)	
Liberalism	.226*** (.075)	.153*** (.039)	.054 (.039)	.131*** (.042)	.204*** (.040)	.177*** (.041)	.058# (.038)	
Income	-.017 (.069)	-.104*** (.037)	-.059# (.038)	-.078** (.040)	.014 (.039)	-.017 (.039)	-.064* (.037)	
Race (White=Hi)	.576 (.389)	.294 (.195)	.171 (.200)	-.239 (.216)	-.564** (.222)	-.156 (.210)	.378** (.190)	
Party ID (Dem=Hi)	.276*** (.086)	.118** (.048)	.178*** (.048)	.081# (.050)	.087* (.049)	.023 (.050)	.120** (.047)	
Gender (Fem.=Hi)	2.173*** (.740)	1.425*** (.410)	.749* (.413)	.561 (.429)	1.134*** (.419)	1.167*** (.420)	.554 (.399)	
Feminism	.918*** (.146)	.356*** (.089)	.326*** (.088)	.379*** (.093)	.525*** (.091)	.319*** (.091)	.444*** (.087)	
Gend.-Fem.	-.635*** (.219)	-.308** (.126)	-.134 (.127)	-.128 (.135)	-.340*** (.130)	-.324** (.127)	-.183# (.123)	
Gender-PartyID	.023 (.116)	-.074 (.064)	.009 (.065)	-.005* (.068)	-.024 (.066)	.025 (.066)	-.031 (.063)	
Interc. 1	14.976	-1.136	-1.302	-2.085	-2.882	-1.148	-1.395	
Interc. 2	—	.658	.123	-.485	-1.453	.144	-.046	
Interc. 3	—	2.667	2.431	1.831	.785	4.343	1.972	
R ²	.240	—	—	—	—	—	—	
X ²	—	117.179	54.128	55.293	67.843	27.930	18.535	
Gamma	—	.283	.341	.323	.361	.290	.315	
n	512	836	839	844	816	838	820	

* = $p < .10$; ** = $p < .05$; *** = $p < .01$; # = $p < .15$ Where no such sign is present, p exceeds .15.

1. The dependent variables are coded so that high values represent viewing spending as fair.
2. The figures in parentheses are standard errors and the figures above them that are not in parentheses are the regression coefficients.

Table 2: Tax Fairness Regression Results

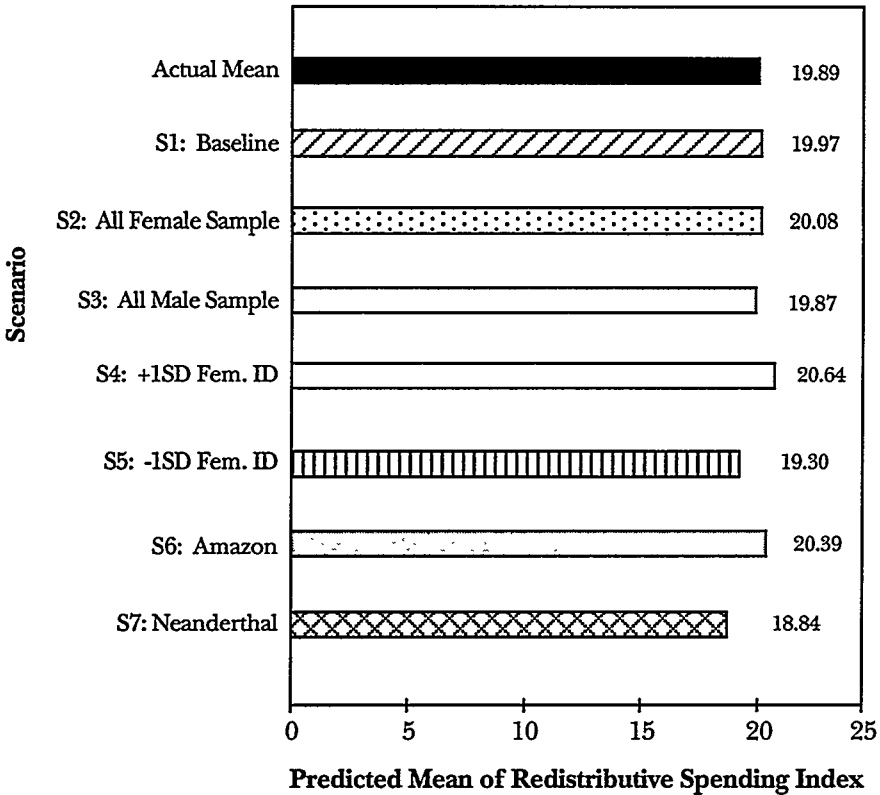
Indep. Variables	Tax Index	Dependent Variables ¹	
		Progressive Taxation	Capital Gains
Age	-.037 (.072) ²	.124 (.080)	-.046 (.092)
Education	.016 (.064)	.238*** (.070)	.045 (.081)
Liberalism	.020 (.032)	.109*** (.037)	.036 (.043)
Income	-.109*** (.032)	-.141*** (.036)	-.139*** (.040)
Race (<i>White=Hi</i>)	.318* (.177)	1.018*** (.186)	.083 (.220)
Party ID (<i>Dem=Hi</i>)	.211*** (.040)	.220*** (.047)	.142*** (.051)
Gender (<i>Fem.=Hi</i>)	-.036 (.338)	.175 (.386)	-.557 (.438)
Feminism	.107# (.066)	.043 (.083)	.038 (.088)
Gend.-Fem.	.097 (.100)	-.083 (.118)	.267** (.131)
Gender-PartyID	-.147*** (.053)	-.083 (.061)	-.083 (.069)
Interc. 1	4.257	.237	-.925
Interc. 2	—	1.881	1.094
Interc. 3	—	3.610	2.847
R ²	.146	—	—
X ²	83.614	40.991	49.010
Gamma	.191	.249	.270
n	512	824	642

* = $p < .10$; ** = $p < .05$; *** = $p < .01$; # = $p < .15$ Where no such sign is present p exceeds .15.

1. The dependent variables are coded so that high values represent viewing progressivity and no separate rate for capital gains positively.

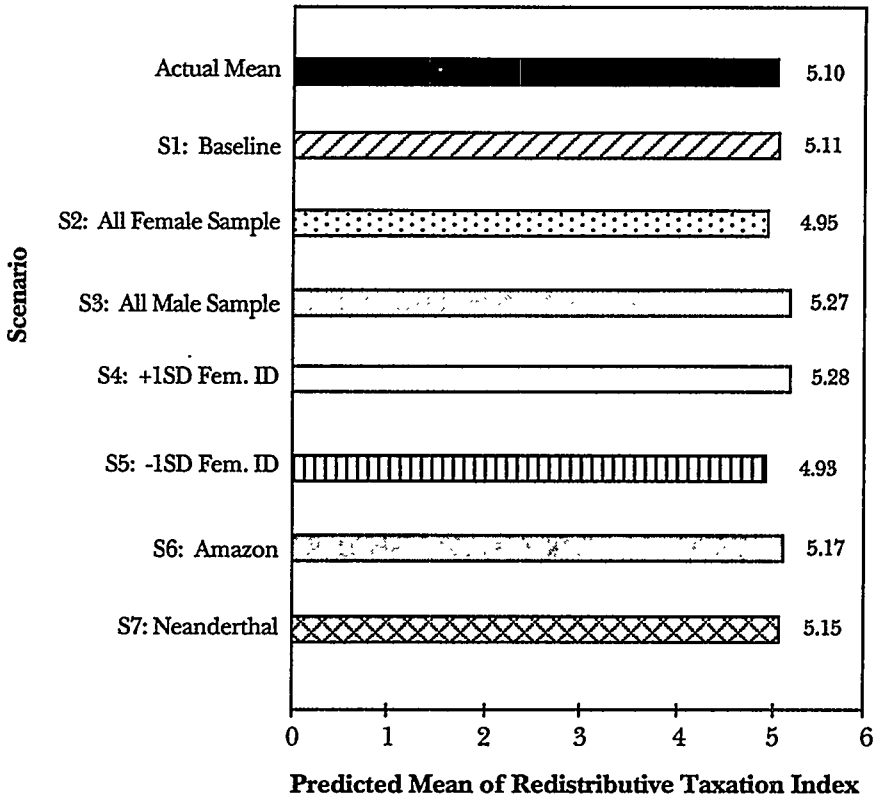
2. The figures in parentheses are standard errors and the figures above them that are not in parentheses are the regression coefficients.

Figure 1: Predicted Mean Value of Redistributive Spending Index Under Alternative Gender and Feminist Identification Scenarios



The actual mean of our sample appears on the first line. The mean of our average respondent is on line S1, that of the all female sample is on line S2, and that of the all male sample is on line S3. Line S4 reports the mean for a markedly more feminist average respondent (feminist component computed at one standard deviation above the mean) and line S5 for a markedly less feminist average respondent (with the feminist component computed at one standard deviation below the mean). Line S6 represents a markedly more feminist all female world while line S7 represents a markedly less feminist all male world with such calculations being made by setting feminist components of the respective samples one standard deviation above and below the mean for each gender.

Figure 2: Predicted Mean Value of Redistributive Taxation Index Under Alternative Gender and Feminist Identification Scenarios*



* See footnote at the bottom of Figure 1 for an explanation of each line in the bar graph.