I am greatly honored to be invited to give the Daniel Meador Lecture. Dean Meador was a visionary in legal education, a prolific legal scholar, and an extraordinary public servant. To give a lecture in his name is a daunting privilege.

I come at this year’s topic of objectivity as a feminist legal scholar. Feminists have had a love–hate relationship with objectivity and, in both the loving and the hating, have produced insights that are useful for thinking about objectivity more broadly. In this lecture I try to draw out and consolidate these insights. I start by briefly summarizing the traditional account of objectivity, which posits a close, symbiotic relationship between objectivity and rationality, as well as a dichotomy between objectivity and such things as bias and emotion. I then review the various critiques of objectivity that have emerged from feminist scholarship. These critiques have focused, in various ways, both on the failure of the law to be objective and on how the concept of objectivity can function to obscure truth rather than to expose it. I then draw on behavioral science findings that call into question conventional understandings of human rationality, and sketch out the implications of this research with respect to objectivity. I conclude by identifying and defending a view of objectivity that is informed by, but is

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not the exclusive property of, feminist thought. This view recognizes the many barriers to objectivity and also the obligation to pursue it.

I. OBJECTIVITY: THE TRADITIONAL ACCOUNT

Objectivity is the quality of approaching decisions and truth claims without the influence of personal preference, self-interest, and emotion. The question of whether a decision or claim is objective can arise in law, morality, science, and any other area in which being “right” matters.

We have few means to assure objectivity in the law. In an ideal, Rawlsian world, rules would be enacted, interpreted, and applied under circumstances in which the decision makers are blind to how the rules and their applications might someday apply to them.1 In the real world, we settle for more imperfect mechanisms to advance objectivity, some of which rely on the decision makers themselves. For example, we ask juries not to be swayed by “mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling,”2 and we ask judges to recuse themselves when they have a personal stake in the outcome of case that might interfere with applying a rule without bias in favor of or against any party.3 Importantly, we do not ask objectivity from all legal actors equally, or in the same way. For example, we ask legal advocates to represent the interests of their clients, and legislators to represent the interests of their constituents. Still, we expect—or at least hope—that these institutional roles will produce fair and even-handed outcomes, by which we mean that they are justified apart from partisan interests and preferences. In other words, setting aside individual interests and preferences remains a high ideal of the law.

While objectivity refers generally to the quality of distance or remove, its assumed value is not distance for its own sake, but rather the improved accuracy it produces. Objectivity promotes accuracy, according to the traditional account, because people are fundamentally rational beings, meaning they are drawn to propositions that make the most sense of the available evidence.4 The assumption that people are drawn to making sense of things is a crucial one. If people are rational, when they set aside their personal interests they will gravitate toward the truth.5 Indeed, if everyone

5. A leading philosophical account of objectivity describes objectivity and rationality largely in relation to each other. See id. at 1 (defining as objective “to proceed as other intelligent people would do in my place”); see also id. at 7 (objectivity amounts to “doing everything that can reasonably be
set aside their personal interests and predilections, they should converge on the same truths. If people are not rational, however, setting aside their personal interests will not necessarily lead them either to a better result, or to the conclusion reached by others who have also set aside their personal interests.

II. OBJECTIVITY: THE FEMINIST CRITIQUES

Since the 1980s and 1990s, feminists—whom I define broadly as those who believe that gender-based inequality is an important problem in this society that we should try to solve—have challenged legal and societal norms on objectivity grounds. This section reviews three different sorts of challenges.

A. Liberal Feminists: Correcting Stereotypes

In law review articles published in 1975\(^6\) and 1978,\(^7\) women’s rights advocate and now-Justice Ruth Bader Ginsburg laid out the outlines of a theory that bears primary responsibility for much of the legal reform in recent decades that has enhanced the rights of women. The theory, referred to as liberal feminism, equal rights feminism, or formal equality, challenges laws and practices that discriminate on the basis of sex on the grounds that they are based on false assumptions or stereotypes about women.\(^8\) Some of the stereotypes attacked by liberal feminists are descriptive, such as generalizations that women are physically weaker, more nurturing, dependent upon men, and not as committed to the workplace as men.\(^9\) Others are prescriptive, such as the normative proposition that women belong in the home and not the workplace.\(^10\) Liberal feminists believe that equal opportunity for women requires correcting both descriptive and prescriptive stereotypes and eliminating the laws and practices based upon

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\(6\). See Ruth Bader Ginsburg, Gender and the Constitution, 44 U. CIN. L. REV. 1, 23 (1975).


\(8\). See id. at 451–60.

\(9\). See, e.g., Frontiero v. Richardson, 411 U.S. 677 (1973) (successfully challenging a military benefits scheme that assumed that wives were dependent upon their husbands and not vice versa).

\(10\). See, e.g., Stanton v. Stanton, 421 U.S. 7 (1975) (successfully challenging state statutes specifying older age of majority for males than for females, which assumed that men should provide for their families, and thus needed to be supported longer by their parents in order to prepare to do so, while women were expected to marry earlier and be supported by their husbands).
them.\textsuperscript{11} Even if a stereotype has some basis in fact, liberal feminists insist on the right of each woman to be treated as an individual and to be given the stereotype-free opportunity to prove that she satisfies appropriate, sex-neutral criteria.\textsuperscript{12}

Liberal feminists oppose not only rules and practices that explicitly restrict women's opportunities, but also those that protect women or give them preferential treatment.\textsuperscript{13} For liberal feminists, the insistence on sex-neutrality is not just a matter of fairness to men; it is also strategic. Despite the short-term advantages that sex-based protective or preferential treatment might provide, liberal feminists believe that special, favorable treatment relies on, and thereby perpetuates, the same stereotypes as rules and practices that discriminate against them. In the long term, only by eliminating all stereotypes will women be free of the restrictions those common stereotypes help to justify.\textsuperscript{14}

For liberal feminists, restricting opportunities for women based on stereotypes about them is irrational on democracy's own terms.\textsuperscript{15} In this sense, they agree with John Stuart Mill, who saw liberal democracy's unequal treatment of women as a "solitary breach"\textsuperscript{16} in an otherwise fair, highly principled system. Ensuring that women are treated the same as men is the liberal feminist repair to this breach.

Notwithstanding the considerable success of liberal feminist principles against many forms of sex-based discrimination, feminist theorists have identified various deficiencies or limitations in the approach.\textsuperscript{17} One

\begin{itemize}
\item \textsuperscript{11} See, e.g., Ginsburg, \textit{supra} note 6, at 23; Ginsburg, \textit{supra} note 7, at 459.
\item \textsuperscript{12} See, e.g., Ginsburg, \textit{supra} note 6. Examples of Supreme Court cases based on this principle include \textit{Reed v. Reed}, 404 U.S. 71 (1971) (invalidating male tie-breaker preference for selection of estate administrators, which was based on the assumption that men were better able to handle business matters), and \textit{United States v. Virginia}, 518 U.S. 515 (1996) (finding it unconstitutional to deny women admission to the Virginia Military Institute, which denial was based on the assumption that women could not succeed at the school and would alter the experience men received).
\item \textsuperscript{13} See, e.g., Wendy W. Williams, \textit{The Equality Crisis: Some Reflections on Culture, Courts, and Feminism}, 7 \textit{WOMEN'S RTS. L. REP.} 175, 186–90, 194–99 (1982).
\item \textsuperscript{14} See, e.g., \textit{id.} at 191, 195–96. Examples of Supreme Court cases that invalidated laws that, on the surface at least, favored women, include Orr v. Orr, 440 U.S. 268 (1979) (invalidating sex-specific alimony laws), Miss. Univ. for Women v. Hogan, 458 U.S. 718 (1982) (invalidating women-only state nursing school), and Craig v. Boren, 429 U.S. 190 (1976) (invalidating lower drinking age for women). In addition to the benefits of reducing stereotypes about women, of course, these cases also helped to reduce stereotypes about men.
\item \textsuperscript{15} See, e.g., Williams, \textit{supra} note 13, at 175–79, 199 (tracing the elimination by courts of rules based on irrational stereotypes and questioning remaining rules that rely on such stereotypes).
\item \textsuperscript{16} \textit{JOHN STUART MILL, THE SUBJECTION OF WOMEN} 19 (Edward Alexander ed., Transaction Publishers 2001) (1869) (arguing that the "social subordination of women . . . stands out as an isolated fact in modern social institutions; a solitary breach of what has become their fundamental law; a single relic of an old world of thought and practice exploded in everything else.").
\item \textsuperscript{17} For a further examination of feminist alternatives to the liberal feminist model, see Katharine T. Bartlett, \textit{Feminist Legal Scholarship: A History Through the Lens of the California Law Review}, 100 \textit{CAL. L. REV.} 381 (2012).
\end{itemize}
limitation is that liberal feminism proceeds on a case-by-case basis, one irrationality at a time, without a theory to address the larger system within which these stereotypes function. Relatedly, liberal feminism is reluctant to hold people and institutions accountable for background inequities they did not create. As a result of these limitations, liberal feminism has difficulty in practice addressing general inequities or systemic failures based on multiple layers of stereotypes, for which no single actor is responsible. For example, although liberal feminists have insisted on the principle of equal pay for equal work, this principle has not reached pay disparities beyond one-on-one comparisons between men and women in the same job. Liberal feminist principles do not provide a way to address gross disparities in pay between jobs filled mostly by men (like firefighters, truck drivers and work in the construction trades), and jobs filled mostly by women (like teachers and secretaries)—disparities that are typically explained by courts as a function of "neutral" market factors rather than as discrimination. Even in similar jobs, liberal feminism has not supplied a theory for preventing pay differences based on background factors that themselves reflect gender stereotypes or bias. So, for example, courts have justified higher pay for the coaches of men's collegiate basketball teams than coaches of women's teams, based on the extra work associated with the revenue-generating potential of the men's teams—a potential rooted in the public's preference for male basketball, over which courts assume colleges and universities have no control. The same inability to reach discrimination grounded in the broader societal patterns has meant the continuation of such practices as sex-specific employer dress and appearance standards, which are justified as a product of "neutral" community standards, sex-specific hiring restrictions in prisons, which are explained by the prejudices of prisoners or

18. Women constitute 97% of preschool and kindergarten teachers, 96% of secretaries and administrative assistants, and 80% of social workers, but only 4% of firefighters, 3% of truck drivers, and less than 2% of electricians, carpenters, and other construction trades. See U.S. BUREAU OF LABOR STATISTICS, HIGHLIGHTS OF WOMEN'S EARNINGS IN 2010, REPORT 1031, at 10–35 tbl.2 (July 2011), available at http://www.bls.gov/cps/cpswom2010.pdf.

19. See, e.g., Am. Nurses' Ass'n v. Illinois, 783 F.2d 716 (7th Cir. 1986) (finding that Title VII requires equal pay for equal work, not "comparable worth").

20. See, e.g., Stanley v. Univ. of S. Cal., 13 F.3d 1313 (9th Cir. 1994), aff'd, 178 F.3d 1069 (9th Cir. 1999).

their guards,\textsuperscript{22} and hiring limitations in therapeutic settings, which are defended by the gender preferences of patients.\textsuperscript{23}

B. Nonsubordination Feminists: Exploding the Myth of Objectivity

While liberal feminists focus on the irrationality or lack of objectivity of stereotypes about women, many feminists have attempted to get at the more structural sources of gender inequity. Nonsubordination theory, dominance theory, or what Catharine MacKinnon calls feminism "unmodified"\textsuperscript{24} sees the whole legal and social order as having been deliberately designed to subordinate women to the interests of men.\textsuperscript{25} Key to preserving this design is the appearance of objectivity, which legitimates men's power as simply the way things are, while trivializing women's efforts to change the status quo as special pleadings. Sex inequality, for nonsubordination theorists, is not just the result of some aberrational or irrational factual misunderstandings about women that can be easily corrected by better application of existing legal principles.\textsuperscript{26} In fact, the system is fully rational—"metaphysically nearly perfect"\textsuperscript{27}—in the sense that all of its parts fit and support the whole. The problem is that this whole reflects and perpetuates an objectivity that is decidedly male.

Men's physiology defines most sports, their needs define auto and health insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their

\textsuperscript{22} See, e.g., Dothard v. Rawlinson, 433 U.S. 321 (1977) (upholding exclusion of women from maximum-security guard positions because they would be potential targets of sexual assault by prisoners); Everson v. Mich. Dep' t of Corr., 391 F.3d 737 (6th Cir. 2004) (upholding exclusion of male guards from women's prisons, based on concern for sexual misconduct by male officers). But see Breiner v. Nev. Dep't of Corr., 610 F.3d 1202 (9th Cir. 2010) (holding that concern for sexual misconduct does not justify exclusion of male guards from female prisons).


\textsuperscript{24} See CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 16 (1987).

\textsuperscript{25} Catharine A. MacKinnon, Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence, 8 SIGNS 635, 644 (1983).

\textsuperscript{26} Id. at 644–45.

\textsuperscript{27} Id. at 638.
perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military service defines citizenship, their presence defines family, their inability to get along with each other—their wars and rulerships—defines history, their image defines god, and their genitals define sex.  

The male perspective not only limits the terms on which women have access to public goods such as employment and education. According to MacKinnon, it also sets the terms of private relationships, determining who can do what to whom and thereby sanctioning acts of violence and abuse against women. It defines sex and even sexual desire. For men, sex is penetration and orgasm; for women, sex means being used the way men use women, and enjoying it. The genius of the system is that concepts such as sexual freedom and reproductive rights seem to prove liberal democracy’s commitment to autonomy while, in fact, these concepts allow women the freedom only to express the sexuality men have assigned to them, for men’s own purposes. MacKinnon argues that even the right to have access to birth control and abortion subordinates women to men, by removing the excuse women may have once had to refuse men’s sexual demands.

For nonsubordination theorists, the way out of the objectivity trap is not more facts and rigorous reasoning, as liberal feminists assume, but a different epistemological orientation. Appropriating "standpoint epistemology" from Marx, who saw the oppressed proletariat as the best source of knowledge about their oppression by the owners of the means of production, MacKinnon reasons that the reality of the male subordination of women can be recognized only by taking seriously women’s accounts of their experiences. Women’s perspectives—and women’s perspectives alone—can reveal that what passes for objectivity in a male-dominated society is objective only from the male perspective. Other feminist theorists have expanded this epistemological stance into a more general theory of outsider knowledge. Mari Matsuda, for example, argues that “outsider

28. MACKINNON, supra note 24, at 36 (internal footnote omitted).
30. Id. at 133, 185.
31. MACKINNON, supra note 24, at 99.
32. Catharine A. MacKinnon, Feminism, Marxism, Methods, and the State: An Agenda for Theory, 7 SIGNS 515 (1982).
33. MacKinnon’s borrowing from Marx is explicit. See, e.g., id.; MacKinnon, supra note 25.
perspectives” are necessary to produce the open inquiry, empathy, and critical thinking that produces any kind of knowledge.  

The notion that the perspectives of victims give them special access to the truth has been a powerful one in feminist thought, although it is widely acknowledged that MacKinnon’s epistemology proves too much. What does taking women’s experiences seriously mean when not all women experience oppression by men in their lives? According to MacKinnon, the reason that all women do not recognize their oppression is a testament to how well men have constructed women to see the world through men’s eyes. In accepting the roles assigned to them by men, women show just how strong a grip the male perspective has on them. But if knowledge is experience-based and people have different accounts of their own experiences, who is to say which one is real or true? MacKinnon’s false consciousness script—however convincing as a theory—would appear to be no less unfalsifiable and no less stacked, methodologically, than the male system she critiques.

C. Positionality Feminists: Reconceptualizing Truth as Partial and Situated

While the nonsubordination critique focuses on the partiality of the male perspective, other legal feminists rely on theories that stress the partiality and social constructedness of all knowledge. From the “postmodern” view, the problem is not just that the present rules of the world are irrational in many details, as liberals would have it, or that they are non-objective at the male-specific core, as feminist standpoint epistemologists contend. The problem is that there is no Archimedean


36. MACKINNON, supra note 24, at 29–30.

37. Id.


39. See supra notes 8–16 and 25–31 and accompanying text.
standpoint from which it is meaningful to think in terms of objectivity; any claim to truth or “objectivity” is the product of a limited set of experiences and perspective.\textsuperscript{40}

As many have observed, the strong version of postmodernism is difficult to reconcile with feminism itself; how can feminists claim that objectivity has no ground to stand on, while themselves making truth claims about the injustice of existing laws and practices?\textsuperscript{41} Accordingly, instead of buying into the full logic of postmodernism, postmodern legal feminists have deconstructed some of the most significant “givens” of the legal system, showing that what appears as objective is, in fact, constructed within a very specific set of power dynamics, linguistic conventions, and social norms, while leaving room for alternative, preferable norms.\textsuperscript{42}

When I wrote about feminist methods in 1990,\textsuperscript{43} I argued that postmodern insights about the nature of truth are most productive when combined with some of the core claims of liberal feminists and standpoint epistemologists. The particular combination I discussed corresponded to a stance that feminist philosophers of science at the time called “positionality.”\textsuperscript{44} Positionality recognizes, like standpoint epistemologies, that what passes for objective truth tends to reflect the interests of those with the power to define what is objective, and that repositioning the viewpoint of the oppressed can help to expose the non-naturalness of certain societal givens.\textsuperscript{45} It does not assume, however, that any other single perspective, including the perspective of victims, can produce a substitute, dispositive truth. Positionality builds on the social constructivist view that truth claims are always from a certain perspective and always specific to the particular set of methods and conditions that produced them.\textsuperscript{46} At the same time, positionality endorses the liberal commitment to the possibility of improving what we know through more rigorous truth-seeking, as if there is such a thing as truth to be improved upon. Positionality recognizes that it is not enough to be suspicious of objectivity; we must also be committed to trying to achieve it.\textsuperscript{47} It views truth as contingent, partial, and provisional, but worth seeking as if it, in fact, exists.\textsuperscript{48}

\textsuperscript{40.} The best representative of the feminist postmodern perspective is Mary Joe Frug. See Frug, supra note 38.

\textsuperscript{41.} See Rhode, supra note 38, at 620 (addressing the “awkward position” for feminists in “maintaining that gender oppression exists while challenging our capacity to document it”).

\textsuperscript{42.} A number of these critiques are gathered in Katharine T. Bartlett, Feminist Legal Methods, 103 Harv. L. Rev. 829, 830 n.2 (1990).

\textsuperscript{43.} Id. at 829–88.

\textsuperscript{44.} See id. at 880–87.

\textsuperscript{45.} See id. at 885–87.

\textsuperscript{46.} See id. at 880–81.

\textsuperscript{47.} See id. at 885–86.

\textsuperscript{48.} See id. at 880–81, 884–87.
Before discussing positionality in more detail, I return to the concept of rationality. As noted earlier, the standard account of objectivity assumes that objectivity is the condition that enables reason to flourish; when people set aside their self-interests, they come to see what others see if they, too, set aside their self-interests. The three feminist perspectives I have described have different positions about the feasibility of setting aside self-interest, but they seem to agree that to the extent this is possible, rationality would take the place of self-interest. But what if that assumption is flawed? What if human rationality is infected not only by self-interest but also by systematic cognitive errors? What if these errors lead people systematically to see things differently from one another, and thus move away from, rather than toward, a convergent truth? What if objectivity requires not only that people set aside their material interests, but also fundamental characteristics in the way they think and reason?

III. RATIONALITY: THE BEHAVIORAL SCIENCE CRITIQUES

The confidence generally assumed about objectivity promoting rationality fits uneasily with behavioral science and neuroscience research about how humans process information. This research—now well-known and reasonably well-accepted—reveals, in various ways, that closeness to one's subject is not the only barrier to rationality; it is perhaps not even the primary one. In addition, people's brains function in ways that cause them often to process information in irrational, non-truth-seeking ways.

The behavioral research to which I refer covers a broad terrain. It includes research showing that we tend to process information in categories defined by characteristics that are salient to us, and that those categories affect how we perceive others. We tend to attribute traits to people and things according to the category—or stereotype—to which they belong rather than according to their actual traits. When we stereotype, we perceive people or things within the same category as more alike than if the category did not exist, and those in different categories as more different. Moreover, we observe, remember, and assess new information to confirm our stereotypes, rather than to correct them. Typically, when we confront evidence that conflicts with a stereotype we hold, we do not tend to revise our beliefs about the group; instead, we dismiss the conflicting evidence as

49. See supra Section I.
evidence of an exceptional case.\textsuperscript{53} For example, if we believe that women are the ones who generally take care of small children, we generally do not alter this assumption when we see men taking care of children; instead, we process these fathers as exceptions to the rule and thereby preserve the underlying generalization.

The human tendency to categorize combines with our tendency to divide people into groups to which we belong and groups to which we do not belong—ingroups and outgroups. Decades ago, Gordon Allport explained that this identification is a major source of racial prejudice.\textsuperscript{54} When we organize people into “we” and “they,” we exaggerate the positive attributes of the groups with whom we identify and the negative attributes of outgroup members.\textsuperscript{55} Again, counter-examples do not cause us to revise our stereotypes. We view a smart, high-achieving individual who is a member of a group with whom we identify as an exemplar of our group, whereas we view a smart, high-achieving individual from an outgroup as an outlier of that group.\textsuperscript{56}

The tendency to confirm the stereotypes we hold is part of a larger tendency to process information in ways that confirm our existing beliefs rather than test and improve them. According to Jonathan Haidt, who gave the Meador Lecture here in 2010, we typically make up our minds first and then select the reasons that best support our chosen result.\textsuperscript{57} Let’s say, for example, that we hear about research claiming that the fetus has feeling at, say, twenty weeks, or that women frequently regret having the abortions they have. Faced with evidence of either or both of these things, few individuals are likely to actually reassess their views on abortion. More likely, they make the new findings fit what they already believe, either accepting these propositions as true if they oppose abortion or dismissing them as bad science if they think women should have reproductive choice.

When our identity is defined through the groups with whom we identify, the commitment to that identity motivates us to accept the dogma


\textsuperscript{54} ALLPORT, \textit{supra} note 52, at 107–28.

\textsuperscript{55} See \textit{id.} at 29–67; \textit{see also} GAERTNER \& DOVIDIO, \textit{supra} note 51, at 36–39; Marilynn B. Brewer, \textit{The Psychology of Prejudice: Ingroup Love or Outgroup Hate?}, 55 J. SOC. ISSUES 429, 430 (1999).

\textsuperscript{56} For the literature on this general phenomenon, see Miles Hewstone, \textit{The “Ultimate Attribution Error?”: A Review of the Literature on Intergroup Attributions}, 20 EUR. J. SOC. PSYCHOL. 311 (1990).

of these groups. This motivation transcends the rationality of that dogma. It also gives opinion leaders the power to shape our assessment of facts and evidence. Those who associate themselves with the world view of, say, Rush Limbaugh, or Rachel Maddow, allow these figures to filter the news for them and order it to fit the assumptions and norms to which they already subscribe. When people change their views, it is often because individuals with whom they identify point them in a new direction, even if these "leaders" are not actually experts. The fans of Shaquille O'Neal take note, for example, when he says they can trust Chris Christie, while Chris Christie helps to restore President Obama's image by praising his response to Hurricane Sandy.

Authority, in turn, helps to create the truth that it asserts. Consider Justice Kennedy's graphic concern for women who come to regret their decision to have an abortion. Being told that women experience great anguish and profound sorrow when they have an abortion tends to increase the anguish that women have, or think they will have, when they make that decision. Conversely, the earlier authority of Roe v. Wade shaped many women's understanding of abortion as a morally neutral medical procedure. In each case, authoritative assumptions provided social cues that likely have more impact than rational thought on women's experience of abortion.

Other research in the behavioral sciences shows that people are not particularly rational in assessing their own interests across a variety of deliberative domains. For example, people tend to let their current feelings and needs influence their assessment of how they will feel about what they

59. See id. at 68 (noting that people most often change their minds by interacting with other people, especially "if there is affection, admiration, or a desire to please the other person").
62. See Gonzales v. Carhart, 550 U.S. 124, 159–160 (2007) ("It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know: that she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her unborn child, a child assuming the human form.").
63. 410 U.S. 113 (1973).
64. Cf. Marjorie M. Shultz, Abortion and the Maternal-Fetal Conflict: Broadening Our Concerns, 1 S. CAL. REV. L. & WOMEN'S STUD. 79, 81 (1992) (expressing concern that in the abortion debate, "extreme autonomy rhetoric and . . . exclusively woman-regarding positions . . . undermine our persuasiveness . . . render us vulnerable on grounds of principle, and . . . damage our aspirations for a humane and responsible world").
will want tomorrow, and to discount the value of future rewards. They often make economic decisions that are short-term, overreact to fads and bubbles, or fail to account for the benefits of trust and collective action.

This research takes us beyond the standard, interests-based account of objectivity that is embedded in most accounts of objectivity, including feminist accounts. The conventional interest-based account assumes that our self-interests prevent us from being objective, but that setting aside our self-interests will permit our rational selves to take over. To the extent feminists criticize the conventional account, it is because they conclude that self-interest runs deeper and more invisibly than is typically presumed.

However, the behavioral research suggests that our self-interests are not the only thing that affects our objectivity. Also implicated are the ways our brains work to over-generalize, self-justify, prioritize present over future gain, affirm rather than test what we already believe, and form beliefs according to the groups with whom we identify.

These cognitive processes are not special flaws of just some people, like terrorists or Republicans. The research shows that all people tend to digest information in ways that interfere with the truth-seeking process. Jonathan Haidt explains that the particular triggers for how we digest information are different. The “sacred cows” that determine how conservatives process information connect to the values of family, God and country, loyalty, the sanctity of life, and people getting what they deserve. Liberals process information through the lens of a commitment to protecting victims, reducing disparities of wealth, and conserving natural resources. Despite these differences, according to Haidt, each group has the same tendency to digest data to confirm their own view of the world.

65. The field of study that focuses on the cognitive difficulties that interfere with people’s ability to predict their wants and needs is called “affective forecasting.” See Daniel T. Gilbert et al., The Peculiar Longevity of Things Not So Bad, 15 PSYCHOL. SCI. 14 (2004); Timothy D. Wilson & Daniel T. Gilbert, Affective Forecasting, 35 ADVANCES IN EXPERIMENTAL SOC. PSYCHOL. 345 (2003).
67. See generally ROBERT J. SHILLER, IRRATIONAL EXUBERANCE (2d ed. 2006).
70. See supra notes 50–68.
71. For an example of the view that the thought processes of Republicans are askew, see CHRIS MOONEY, THE REPUBLICAN BRAIN: THE SCIENCE OF WHY THEY DENY SCIENCE—AND REALITY (2012).
72. HAIDT, THE RIGHTEOUS MIND, supra note 57, at 288–313.
73. Id. at 128–54. Haidt does believe that Republicans hold values that make it easier to exploit how humans think. Id. at 155–86.
This wide array of research calls into question conventional concepts of objectivity and rationality, and the relationship between the two. The next Part explores some of the implications.

IV. POSITIONALITY

The traditional account of objectivity presupposes that we can set our interests aside and that doing so enables rationality to flourish, bringing us closer to objective truth. Feminist critics of this account question the achievement and even the achievability of objectivity, emphasizing the various ways in which power relationships and material interests serve to control what counts as an objective view of the world. The behavioral research shows not only that our material interests affect our view of reality, but also our cognitive processes. It shows that the processes upon which we would rely if we managed to set aside our self-interest are also unreliable and that we use "reason" not so much to arrive at right answers, as to justify our existing view of the world, pump up our feelings of self-worth, and fulfill our need to belong.

We might say that, insofar as the various cognitive processes described in the behavioral science literature fulfill various psychological and emotional needs, these processes are, in fact, rational. If our cognitive mistakes serve our non-rational needs, they are, one might say, rational mistakes. The problem with this broadened view of rationality is that, so defined, rationality no longer has the attributes that led us to value it in the first place. Under the conventional view of objectivity, the purpose of setting aside our self-interests is to lead us toward greater rationality, which advances truth. But to the extent what counts as rationality amounts to little more than the justification of our existing, emotion-laden, ego-needy view of the world, we have lost the truth-seeking reasons to pursue it. Expanding rationality to encompass the processes by which we believe what we believe may give us a better working description of the way the

74. For present purposes, I omit another body of potentially relevant social science evidence, which challenges the dichotomy between objectivity and emotion and suggests that emotion can play a positive role with respect to moral judgment, and also with respect to fact-finding concerning such things as risk or advantage, and the intentions of others. For a neuroscientific account of the positive role that emotion can play in improving perceptions and judgment, see ANTONIO DAMASIO, DESCARTES' ERROR: EMOTION, REASON, AND THE HUMAN BRAIN 34–51 (1994). Susan Bandes relies upon Damasio's work, among others, in criticizing the legal system's efforts to exclude emotion from legal decision making. See, e.g., Susan A. Bandes, Repellent Crimes and Rational Deliberation: Emotion and the Death Penalty, 33 VT. L. REV. 489 (2009).

75. See supra notes 4–5.


77. See supra Section III.

78. See supra notes 4–5.
brain works, but it does not inspire confidence that the truths produced by these processes are correct ones.

To advance truth, then, we would need to transcend not only our self-interests, but also the mental processes that motivate us to fulfill our various psychological and emotional needs rather than to discover truth. How should we think about this challenge?

This brings us back to positionality which is, I believe, the most useful way of thinking about the enterprise of truth-seeking. Positionality does not eliminate the challenges that attend the many barriers we face in determining what is real and true. It does describe, however, the way we should situate ourselves, both methodologically and ethically, in relation to these barriers. Positionality combines self-skepticism with a commitment to truth-seeking, encompassing a responsibility both for understanding our own partiality and distorted ways of thinking and for striving to overcome these multiple distortions. Acknowledging the limitations of truth, positionality insists that we nonetheless are obligated to strive toward it.

This obligation entails a commitment to explicit, defensible criteria of knowledge. Ideally these criteria make sense even to those people who don't come from the same perspective or who have different sacred cows—if they too try to set aside their perspectives.

One might suppose that our ability to be certain of our truths might be easiest in the physical sciences. There exists, after all, a tangible world; with enough rigor, we ought to be able to describe how it works. Given this greater concreteness, it is noteworthy that debates about the nature of truth and truth-seeking are not significantly different in the sciences than they are in law and other fields. In fact, feminist theorists line up roughly the same way as they do in the fields of law and ethics. Some feminist theorists in the sciences associate themselves with empiricism, emphasizing the need for the rigorous testing of hypotheses. Some advocate the premise of standpoint epistemology that "starting from women's lives is a way of gaining less false and distorted results of research." Others promote a

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80. Id. at 881–86.
view of "situated knowledge," emphasizing that scientific truths are partial, particular, and provisional.\textsuperscript{83}

While important differences exist between these positions, the convergences are telling. In defending empiricist methodologies, for example, Helen Longino takes account of standpoint and other feminist critiques of traditional science, arguing that scientific knowledge is not just about hypotheses and empirical proofs; it is, rather, a "critical dialogue" in which "individuals and groups holding different points of view engage with each other."\textsuperscript{84} For Longino, scientific knowledge is constructed not by individuals applying a method to the material to be known, as traditional science may have envisioned, but "communities of practice" in "interaction with one another"—including those who approach science from entirely different angles—"in ways that modify their observations, theories and hypotheses, and patterns of reasoning."\textsuperscript{85}

Likewise, Sandra Harding, who argues that scientific knowledge is a result of conflict between different standpoints each reflecting their own place in the society's hierarchy rather than the kind of consensus imagined by Longino, moderates the implications of her emphasis on outsider standpoints with qualifications drawn from other theories. She acknowledges, for example, that feminist knowledge does not claim to be neutral, even about the nature of women's experiences, and that while women's lives are a source of truth, women's experiences are only the starting point; "the answers . . . must be sought elsewhere."\textsuperscript{86} She also states that having a determinate location on a social matrix "does not determine one's consciousness,"\textsuperscript{87} and that people can work to overcome the blindness created by their own privilege.\textsuperscript{88}

Feminist philosophers of science who have aligned themselves with the positional view of truth as partial and provisional incorporate important aspects of both empiricism and social constructivist theories. Donna Haraway, for example, writes that we need accounts of knowledge that include not only the "radical historical contingency for all knowledge claims," but also "a no-nonsense commitment to faithful accounts of a 'real' world."\textsuperscript{89} Knowledge is situated, according to Haraway, to the extent that it is contingent on the incomplete methods used to produce it. Yet knowledge is not meaningless. It is the best understanding we have at any

\textsuperscript{83} Donna Haraway, \textit{Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective}, 14 FEMINIST STUD. 575 (Fall 1988).
\textsuperscript{84} Longino, supra note 81, at 112.
\textsuperscript{85} Id. at 111.
\textsuperscript{86} Harding, supra note 82, at 343, 346 (emphasis omitted).
\textsuperscript{87} Id. at 345.
\textsuperscript{88} Id.
\textsuperscript{89} Haraway, supra note 83, at 579.
one time, given the contingencies. Truth may be contingent, partial, and provisional, but we all, including feminists, “have to insist on a better account of the world; it is not enough to show radical historical contingency and modes of construction for everything.” Karen Barad elaborates a similar thought: “The fact that scientific knowledge is socially constructed does not imply that science doesn’t ‘work’, and the fact that science ‘works’ does not mean that we have discovered human-independent facts about nature.”

Skepticism about objectivity in the sciences is hardly the exclusive domain of feminists. Scientists widely recognize that any research occurs within a certain set of experimental conditions—conditions that are often hard to fully specify, even though any research results can be “right” only within those conditions. Even knowing this, however, scientists inevitably take much for granted, including the findings of past science, which can easily settle into unchallenged paradigms. These paradigms are self-reinforcing. Scientific research based on the unexamined premise that the world is flat will reinforce the premise that the world is flat—until someone thinks to prove it is not.

Scientists also widely accept the fact that scientific hypotheses, although essential to scientific method, themselves tend to bias scientific study in favor of evidence that supports these hypotheses and against evidence that is difficult to reconcile with it. As David Goodstein has pointed out, there is more reward in science for proving the hypothesis than for disproving it. Scientists, like the rest of us, are looking to prove themselves right. Moreover, acceptance as good science means convincing a peer review system that represents accepted knowledge, not disruptions of it. Recent research suggests that unchallenged, authoritative assumptions and data biases may be more of a problem than we realize. A well-known study by two research scientists concludes that only six out of fifty-three landmark cancer studies could be replicated and that the results of the other studies may not be true.

A further problem is the lack of transparency in the interaction between researcher and the object of study. Feminist scientists have argued that the object of study cannot be a reality totally independent of the researcher.

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90. Id.
92. DAVID GOODSTEIN, ON FACT AND FRAUD: CAUTIONARY TALES FROM THE FRONT LINES OF SCIENCE 12–13 (2010).
93. Id. at 9–26.
Karen Barad addresses the ways in which the scientist is part of what he or she observes, writing that "there is no unambiguous way to differentiate between the ‘object’ and the ‘agencies of observation.’"95 Scientists help to shape the reality they observe and describe.96 A well-known cartoon shows Pavlov’s dog, hooked up to his testing apparatus, saying to another dog standing by, “Watch what I can make Pavlov do. As soon as I drool, he’ll smile and write in his little book."97 In real life, the tables in the science lab are rarely so dramatically turned, but good science requires awareness of the human agency of the scientist, whose limited and self-interested processes of observation inevitably play a hand in the results that science produces.98

Notwithstanding these many concerns and qualifications, feminist scientists retain the core commitment to advancing objective knowledge. As Donna Haraway states, “we could use some enforceable, reliable accounts of things not reducible to power moves.”99 Karen Barad concurs.100 Science is not separate from us, but neither is it an “arbitrary construction.”101 Finding those reliable accounts requires of researchers what the scientific method, at its best, also demands—awareness of the dangers of bias and cognitive misperceptions, methods that are careful not to reject evidence simply because it does not fit the hypothesis, standards of proof that are accountable to the community of truth-seekers, consideration of competing perspectives, affirmative efforts to step beyond familiar paradigms, and attention to the interaction between the researcher and the object of research.

The way scientists have approached the limitations of the scientific method informs how we might think about truth-seeking in other, “softer” domains, like the law. We do not—we cannot—step entirely outside ourselves when we write, interpret, or criticize law. What we believe to be correct is, more than we usually recognize, the product of our interests, cognitive handicaps, methodologies, and the givens handed down to us and perpetuated by particular social communities. At the same time, as is the case in science, we have a commitment to the ideal of looking beyond ourselves, toward understandings that take better account of other

95. Barad, supra note 91, at 170 (emphasis omitted).
96. Id. at 184.
98 Barad, supra note 91, at 179–186 (explaining the theory of “agential realism” and the cultural embodiment of science).
100. Barad, supra note 91, at 184–86 (describing the role of scientific concepts as between the object and the agencies of observation).
101. Id. at 185.
perspectives, make better sense of the evidence, and reach better solutions. We have a commitment, in short, to objectivity.

V. CONCLUSION

When we understand the role of both self-interests and the arguably irrational ways in which we cater to our psychological needs to belong, to satisfy ourselves now rather than to defer gratification, and to affirm what we already believe, there are two broad paths to follow: (1) We can abandon objectivity in order to pursue our own self-interests—after all, what else is there?\textsuperscript{102} or (2) we can decide that, despite the roadblocks to achieving objectivity, it is a meaningful goal worth pursuing.

I hope I’ve convinced you that door number two—the positionality door—is the more attractive one. Overconfidence in our objectivity and excessive cynicism about it are both truth-suppressing, although for different reasons. When we are too sure about our objectivity, we take things conveniently for granted, neglecting the obligation to identify and defend our assumptions and our criteria for truth and to recognize alternative perspectives. When we are too cynical, we also neglect the obligation to look beyond our own perspectives; since we don’t think objectivity exists, or we believe it exists only to maintain existing power relationships, there seems little reason to search for it.

Positionality tries to have it both ways, which is the way we should try to have it—recognizing the limitations of our own objectivities, yet accepting the obligation to justify ourselves in terms intelligible from outside our limitations.

Does the positionality stance matter to the likelihood of advancing the truth? I think so.\textsuperscript{103} Openness to our own limitations has no necessary substantive implications, but it constitutes the condition within which more accurate truth-seeking is possible. It is a posture that makes us more intentional, more disciplined, and more constructively skeptical. Paradoxically, it makes a difference in the way religious faith can make a difference: the practice of seeking truth because we believe it is important to do so can deepen our commitment to the search, even though we can’t always know when, or if, we’ve found what we’re looking for.\textsuperscript{104}

\textsuperscript{102} For a version of this approach, see Stanley Fish, The Trouble with Principle (2001).

\textsuperscript{103} For the argument that it doesn’t matter, see Stanley Fish, Dennis Martinez and the Uses of Theory, 96 YALE L.J. 1773 (1987).

\textsuperscript{104} See Christopher Schroeder, Foreword, A Decade of Change in Regulating the Chemical Industry, 46 LAW & CONTEMP. PROBS. 1, 13 n.45 (citing R. Neibuhr, Christ and Culture 233–41 (1951) (observing that the notion of “unknowable yet indispensable truths is central to many religions”).}
Some propositions—about law, or moral truth, or the workings of the physical universe—are simply more true, or more right, than others. The goal of objectivity requires us to search for and seek to identify those truths. Whether what we find are improved understandings or self-rationalizations—we won’t always be able to tell the difference. But surely the only hope for more accurate truth-finding lies in the belief in its possibility, and in the organic brand of self-knowledge and self-discipline that would be necessary to discern it.

105. As I stated in 1990, in the moral realm:

Propositions such as that I should love my children, that I should not murder others for sport, or that democracy is . . . better than authoritarianism seem so “essential” to my identity and my social world that I experience them as values that can never be overridden, even as standards by which I may judge others. Bartlett, supra note 42, at 883. Arthur Leff’s list is more well-known and perhaps less controversial: “Napalming babies is bad. Starving the poor is wicked. Buying and selling each other is depraved. Those who stood up to and died resisting Hitler, Stalin, Amin, and Pol Pot—and General Custer too—have earned salvation. Those who acquiesced deserve to be damned.” Arthur Leff, Unspeakable Ethics, Unnatural Law, 1979 DUKE L.J. 1229, 1249 (1979).