ABSTRACT

TO: Professor Margaret Johnson
FROM: Professor Michele Gilman
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This paper discusses the lack of privacy poor women suffer, argues that third-wave feminism is ill-equipped to address the privacy needs of poor women, and attempts to construct a new framework for enhancing the privacy rights of poor women. Feminism has long been concerned with privacy. Second-wave feminists such as Susan Moller Okin and Catherine MacKinnon argued that the public/private divide trapped women in their homes with no protection from men who abused them. They sought to break down the divide to protect women and to challenge the concept of government neutrality. This critique was powerful; changes in domestic violence laws have led to governmental protections against abusive relationships. At the same time, feminist critiques of privacy led to counter-arguments defending the potential virtues of privacy for women. For instance, liberal feminist theorists such as Anita Allen and Linda McLain countered that privacy, properly constructed, can protect women from inappropriate state intrusion and promote moral personhood and autonomy.

This important debate implicates the interests of all women, but tends to presume a (white) nuclear family with a husband who benefits from privacy at the expense of his spouse. By contrast, poor women face a unique set of privacy issues that are not captured by the public-private debate. After all, as a historical matter, poor women have long had less privacy than middle class women. While domestic violence advocates urged government to enter the sanctity of the private home, government was already in the homes of poor women, usually as a surrogate for the absent male. Moreover, the public/private divide does not describe the modern welfare state. Indeed, formerly “private” tasks such as dependency care are now commodified and mandated as work opportunities for poor women. At the same time, the private sector is taking over increasing portions of welfare administration, thereby lessening governmental accountability for due process.

Poor women continue to face intrusions on their decisional and familial privacy. As a condition of receiving welfare benefits, poor women have been subjected to drug tests, and they continue to face unannounced home inspections by government officials and restrictions on their reproductive choices, including monetary caps on welfare benefits for families over a certain size. These formal welfare requirements overlay a routinized lack of privacy for poor women, who must interact with government bureaucrats on a regular basis to obtain public benefits. They must comply with extreme verification requirements to establish eligibility, travel to scattered offices to procure
needed approvals, reappear in person at welfare offices at regular intervals to prove their ongoing eligibility, and answer intrusive questions about their child-rearing and intimate relationships. While many Americans are concerned about a loss of privacy in modern America -- from warrantless wiretapping to data breaches of personal information -- those privacy invasions generally do not contain the element of societal judgment that pervades surveillance of the poor.

The consequences of this lack of privacy for poor women are alarming. In his groundbreaking research, *Overseers of the Poor*, John Gilliom studied a group of welfare recipients to determine the impact of constant government surveillance. Although the group of women was diverse, they uniformly lacked any consciousness of their rights and they made no tactical use of the law. Instead of privacy talk, their discourse focused on need, care, and responsibility as they struggled to provide for their families with stingy welfare benefits. They engaged in small acts of resistance that led them to feel guilt and degradation, rather than mobilizing for legal and political reforms that could improve the welfare system and their economic circumstances. In short, surveillance has a price.

Yet the law generally provides scant privacy protection for the poor. As a constitutional matter, the Supreme Court has ruled repeatedly that the poor have less reasonable expectations against government searches than do more affluent Americans; that governmental interests in preventing fraud outweigh “minimal” privacy intrusions; and that the government can attach conditions to its funding decisions without triggering heightened scrutiny. No amount of feminist legal action or theorizing has significantly altered this landscape.

Unfortunately, third-wave feminism has, so far, had little to say about privacy and the poor. To the contrary, third-wave feminism advances self-exposure, conscious objectification, and female sexual power -- the opposite of privacy. Further, third wave feminists rely heavily on technology to disseminate their messages; a form of communication to which many poor women lack access. At the same time, the emphasis of third-wave feminism on individual narrative and diversity of experience may impede movements for political change.

Accordingly, I argue that it is time for feminists to re-engage on issues of privacy as they impact poor women. From the perspective of liberalism, privacy promotes autonomy, which allows individuals to live their lives as they choose. From the perspective of civic republicanism, privacy can promote conditions for critical self-reflection that contribute to deliberative democracy. However, I am not convinced that these philosophical justifications for privacy are sufficient. We can make greater strides if we can link privacy to conditions that would help lift women out of poverty. To be sure, privacy cannot replace economic opportunity as an anti-poverty strategy. Yet welfare is constructed around the idea that poor women should work, while also building healthy families. Privacy -- that is, a life without condemnatory surveillance -- can promote dignity, security, and empowerment. These are all qualities that make for successful workers and mothers. As a personal and political matter, it makes for good welfare policy.