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Asking for It: Gendered Dimensions of Surveillance Capitalism

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Asking for It: Gendered Dimensions of Surveillance Capitalism

Cover Page Footnote

I am grateful to Sophia Lee for helpful conversations and comments on early drafts of this article.

I. Introduction

Corporate America knows that it pays to be—or at least appear—“woke.”¹ Although in the United States, it is unlawful for a corporation to prioritize charitable or social objectives over its sole legitimate *raison d’être*, generating profits for shareholders, this has not stopped the executive class from pretending otherwise.² Thomas Frank has traced the beginnings of corporate co-optation of the counterculture in the 1960s, a trend that led to a consumer sphere where “peace symbols decorate a line of cigarettes manufactured by R.J. Reynolds and the walls and windows of Starbucks coffee shops nationwide.”³ Today, presenting a brand as being nonspecifically supportive of popular social movements is increasingly regarded as a savvy marketing strategy, whether one’s goal is to sell more Barbie dolls or Pringles potato chips.⁴ Sometimes this performative corporate solidarity takes the shape of formal statements about commitments to antiracism or sustainability, but the principal tool companies use to communicate with prospective consumers is still advertising.⁵ As neoliberal feminism has largely supplanted more insurgent feminisms, feminist-flavored advertising has become popular enough to have earned its own infantilizing sobriquet: “femvertising.”⁶ As Sarah Banet-Weiser has argued, “within neoliberal brand culture, specific feminist expressions and politics are brandable, commensurate with market logics.”⁷ These include “those that emphasize individual attributes such as confidence, self-esteem, and competence as particularly useful to neoliberal self-reliance and capitalist success.”⁸ We see them in calls to embrace “self-care,” particularly when it requires costly skin serums, “body-positivity,” particularly when facilitated by new athleisure ensembles, and—until recently—being a #girlboss.⁹

Perhaps the most notorious early example of this genre was Virginia Slims cigarettes’ “You’ve Come a Long Way, Baby” series, launched in 1968.¹⁰ While the campaign was criticized for exploiting the

idea of women's liberation in order to sell those newly-liberated women a highly addictive product known to cause cancer, sales rose by half a billion units after the slogan was introduced.¹¹ More recent examples include the Dove campaign for "real beauty" and #AerieREAL campaigns, both of which turned enormous profits by appropriating vaguely feminist themes of self-love and empowerment. The personal care product company Dove saw profits grow by \$1.5 billion after introducing ads that conspicuously featured fuller-figured models and encouraged women either to see themselves as physically beautiful, regardless of their size, or to reject the idea of physical beauty as a determinant of self-worth. It was never entirely clear which.¹² Clothing company Aerie's sales shot up after it announced that it would stop using retouched images of models in its ads and instead feature "real" women.¹³

In the 1970s, a strand of radical American feminism saw advertising as an instrument of heteropatriarchal capitalist oppression not merely because it promoted damaging and unrealistic standards of physical perfection for women, but because these feminists viewed advertising targeting women as an invasion of privacy.¹⁴ Now, even as technology has made it possible for advertising to become exponentially more invasive, targeted advertising is generally seen not as an incursion, but as something worth fighting *for*, or even claiming as a right.¹⁵ In this article, I argue that neoliberal capitalism was able to swallow up this radical feminist critique in part because prominent liberal feminists and legal organizations decided in the 1970s that privacy was less important than access (or accessibility) to the free market. They invited the vampire in. Today, women faced with the far more formidable threats to privacy posed by Big Data lack a meaningful cultural or legal context for pushing back, and they are suffering as a result.

II. Advertising and the courts: “Once privacy is invaded, privacy is gone.”

The expectation that advertising should make a positive contribution to social progress is a rather peculiar—and relatively new—one. Americans have long despised advertising in all its forms for unsurprising reasons—it creates visual and aural clutter and takes up space most would prefer to be filled with sought-out content or otherwise left empty. Digital video recorders (DVRs) became popular in part because consumers preferred to skip commercials while watching television.¹⁶ Once it became possible for people to download “ad-blocking” software or pay a premium to avoid advertising when engaging with certain online platforms, many were quick to do so.¹⁷ When asked why, those who go out of their way to avoid advertising cite its “intrusiveness.”¹⁸

Americans had begun to see advertising as “an endless con, all half-truths and hyperbole and outright lies” by the early twentieth century.¹⁹ Willy Loman, the iconic protagonist of Arthur Miller’s 1949 *Death of a Salesman*, is portrayed as being a pitiable dupe for believing the promises of advertising in an era when planned obsolescence was becoming widespread.²⁰ In the post-war period, people also began to get suspicious that there was something more sinister than mere dishonesty at work in the advertising bombarding them. Advertisers seemed to be after more than consumers’ pocketbooks—now they wanted consumers’ souls.

The incipient science of motivational research (“MR”) seemed capable of putting the soul within the reach of every salesman in the 1950s. The advertising industry became enamored of this pseudo-psychoanalytic approach to marketing just as Freudian vocabulary, if not Freudian pessimism, was gaining currency in the U.S.²¹ The MR men went after the contents of the unconscious not for the sake of facilitating self-knowledge, but for the sake of locating and exploiting the

psychological vulnerabilities of consumers in order to sell products. In his bestselling 1957 exposé of the MR mania that had swept the advertising industry *The Hidden Persuaders*, Vance Packard described MR's three tenets of faith: first, "[y]ou can't assume that people know what they want;"²² second, "[y]ou can't assume that people will tell you the truth about their wants and dislikes, even if they know them;"²³ and third, "it is dangerous to assume that people can be trusted to behave in a rational way."²⁴

Fundamental to the midcentury ad man's worldview was the supposition that, while she may say "no," surely she meant—or could be convinced that she meant—"yes."

Since the postwar period, Americans have tried to litigate their way out of being subjected to such assaults of persuasion by alleging that advertising constitutes a violation of privacy. These litigants have seldom been successful, however, because the government itself is generally not the entity exposing people to advertising against their will, and plaintiffs must accordingly rely on tort regimes. When state action is at issue, courts have tended to see advertising as a minor annoyance or necessary evil rather than an invasion of a protected sphere. *Public Utilities Commission of D.C. v. Pollak* was one early example of this problem of misdiagnosis, a 1952 action brought by streetcar passengers who objected to the advertising-punctuated radio programs the railway company selected as the soundtrack for their commute to and from work.²⁵ While the railway company, Capital Transit, was privately owned, it was subject to regulation by the D.C. Public Utilities Commission, implicating the state action doctrine.²⁶ The plaintiffs challenged the radio broadcasts on Fifth Amendment grounds as a violation of passengers' privacy.²⁷ In defending its decision to deploy the broadcasts, the Public Utilities Commission noted that most people enjoyed them, that—because the radio service was a way of renting out the streetcars for commercial advertising purposes—the broadcasts were a source of income for the Commission, and that the "music on the vehicles had a tendency to keep the

passengers in a better mood.”²⁸ The Court found no violation of the Fifth Amendment.²⁹ Writing for the majority, Justice Burton said that the plaintiffs’ position “wrongly assumes that the Fifth Amendment secures to each passenger on a public vehicle regulated by the Federal Government a right to privacy substantially equal to the privacy to which he is entitled in his own home.”³⁰

Justice Douglas, whose 1965 opinion in *Griswold v. Connecticut* would lay the groundwork for much of our subsequent privacy jurisprudence,³¹ wrote *Pollak’s* powerful dissent. “Liberty,” as used in the Fifth Amendment, he averred, “must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom.”³² The streetcar audience, Douglas reasoned, was a “captive audience.”³³ While passengers “may not of course complain of the noise of the crowd and the babble of tongues” while aboard a public conveyance, Douglas thought it eminently reasonable that they should expect to be free from the additional invasion of privacy posed by the radio broadcasts.³⁴ Douglas argued that the majority was teetering on the edge of a slippery slope. “Today the purpose is benign; there is no invidious cast to the programs,” he wrote, “[b]ut the vice is inherent in the system. Once privacy is invaded, privacy is gone.”³⁵ Douglas worried that by relinquishing this zone of experience—the ambient, aleatory soundscape of one’s daily commute—to the public sphere of commerce, we would lose something forever. He was right. Before Capital Transit thought to commodify and monetize that soundscape, it would never have occurred to anyone to think of it as “belonging” to anyone, as either private or public, occupied or unoccupied. It was simply there in the background, as much a condition of existence as space or time. Only once it was colonized by advertising did it become possible to understand that what had been taken from the passengers was the freedom of thought and attention, even if that only amounted to the freedom *not* to be in the “better mood” the transit company felt made its clientele more

compliant.³⁶ “The right of privacy,” Douglas concluded, “today violated, is a powerful deterrent to any one who would control men’s minds.”³⁷

In another 1952 case, *Perry v. Moskino Stores*, the court spoke of the contest between privacy and advertising as one already conceded.³⁸ The plaintiff claimed that his privacy had been violated—and his life essentially destroyed—by a single department store ad.³⁹ To promote a sale, the store mailed to prospective customers postcards written in feminine handwriting with the message to call a given number and “ask for Carolyn.”⁴⁰ The plaintiff’s wife found the card and assumed her husband was having an affair.⁴¹ Because the plaintiff was unable to explain who “Carolyn” was, his wife left him.⁴² The court was not sympathetic to the plaintiff’s plight, speculating that there must have been more amiss in the couple’s marriage than the bare facts of the case suggested. “Modern day advertising techniques have come to be accepted and are in effect a limitation on the individual’s right of privacy,” the court held, “[s]uch methods are not actionable so long as they are not unreasonable.”⁴³

Consumers would, however, continue to object to advertising that they felt violated their privacy by breaching the sanctum of the home through the mail. In the 1960s and 1970s, the practice of companies maintaining and selling customer lists for purposes of solicitation was decried by consumers, but courts lacked the vocabulary to recognize such tactics as invasions of privacy. In 1967, for example, New York car-owners brought an action alleging a violation of privacy after completing a state-mandated vehicle registration process only to discover that their names were thereafter being retained, sold, and used for solicitation.⁴⁴ As a result, the plaintiffs were subjected to “considerable annoyance, inconvenience and damage...by reason of the large volume of advertising and crank mail” they received.⁴⁵ The court was nonplussed.⁴⁶ “The mail box, however noxious its advertising contents often seem to judges as well as other people, is hardly the kind of enclave that requires constitutional defense to protect ‘the privacies of life,’” said the court.⁴⁷

“The short, though regular journey from mail box to trash can...is an acceptable burden, at least so far as the Constitution is concerned.”⁴⁸ The advertising, after all, brought the state much-needed revenue, noted the court.⁴⁹ In weighing the ever-tangible benefits of cash against the intangible benefits of a life made a little less blighted by the absence of commercial trash pouring in through the mail every day, the court could see no way not to assign greater weight to the cash.⁵⁰

III. Surveillance capitalism

Today, because of the internet’s growing centrality to much of human activity, advertising pervades ostensibly “private” and “public” spaces to a previously unimaginable degree. Shoshana Zuboff argues that neoliberal capitalism has mutated into what she calls “surveillance capitalism.”⁵¹ This new economic regime is supported by mass online dataharvesting conducted by large technology companies led by Google, Facebook, and Amazon, and threatens to render privacy functionally and conceptually obsolete. In Zuboff’s account, the tech companies closely monitor consumers’ online activity in order to extract consumers’ “behavioral surplus” for profit, as the capitalist profited by vampirically extracting “surplus labor” from the proletariat in Marx’s account. “Instead of labor,” Zuboff writes, “surveillance capitalism feeds on every aspect of human experience.”⁵²

McKenzie Wark suggests that the transformation in political economy has been even more extreme. According to Wark, what we have today is not capitalism at all anymore, but something worse.⁵³ “The dominant ruling class of our time no longer maintains its rule through the ownership of the means of production as capitalists do,” she argues. “Nor through the ownership of land as landlords do. The dominant ruling class of our time owns and controls information.”⁵⁴ Wark proposes conceiving of today’s central class struggle as one between the dominant “vectoralist

class”—those who control the means of mass data collection, aggregation, and commodification—and the subordinate, generative-but-disenfranchised “hacker class.”⁵⁵ The most ubiquitous trace of the new regime can be observed in the form of unnervingly specific targeted online ads that follow people around from one site to the next, jumping without apparent friction between platforms and devices. Effective targeted advertising is made possible by what Zuboff calls “behavioral rendition,” the process by which the tech companies convert our online activities into data about our physical states and locations, purchasing patterns, moods, habits, preferences, fears, hopes, and dreams.⁵⁶ This data can then be used to predict when an individual will be most vulnerable to a particular type of ad for a particular type of product.⁵⁷ Of course, behavioral rendition captures much of our offline activity as well, since it is now rare to ever be entirely off the grid. An individual produces a great deal of exploitable data, or “digital exhaust,” simply by carrying around an iPhone set to provide accurate information on the weather, for example.⁵⁸

Advertising is central to the business models of such mega-platforms as Google and Facebook, because the “services” they offer to consumers are “free.” Accordingly, the vectoralists insist that behavioral tracking is good for consumers.⁵⁹ Tracking, they say, generates revenue from advertising that allows the tech platforms to avoid charging consumers a direct fee, “improves” the online experience for consumers by showing them the most “relevant” ads, and helps corporations make more money, which allows them to pass on savings to the consumer in the form of lower prices for goods.⁶⁰ These arguments obfuscate the exploitative nature of the relationship, the ways in which the tech companies are taking advantage of asymmetries of information to steal something from the consumer in order to make a profit by colonizing the minds of consumers.⁶¹ “Under this new regime,” as Zuboff puts it, “the precise moment at which our needs are met is also the precise moment at

which our lives are plundered for behavioral data, and all for the sake of others' gain."⁶²

Remarkably though, just as advertising is becoming more invasive than ever before, people seem to be becoming inured to it, seeing advertising not as a form of exploitation, nor as an inconvenience, but rather as a convenience, or even something people have a *right* to. Popular feminist Roxanne Gay, for example, has written that “we shouldn’t dismiss the importance of inclusion in advertising. When advertisers ignore diversity, it is because they don’t think the lives of others matter...There are all kinds of people who continue to be largely ignored by advertisers, whose lives largely go unseen. They deserve their moment.”⁶³ They are having their moment now, but it is a grave error to associate one’s demographic being represented in—that is, targeted by—advertising with one’s life “mattering” to anyone in any meaningful way. Fighting to be “seen” by corporations that legally cannot care about anyone or anything more than they care about their bottom lines is perverse and self-destructive.

One of the key early American privacy law cases was brought by Abigail Roberson, a teenage girl whose photograph was reproduced without her consent on 25,000 posters advertising a particular brand of flour.⁶⁴ In 1902, Roberson argued that the advertisements violated her “right to be let alone,” a concept promoted by Samuel Warren and Louis Brandeis in their influential *Harvard Law Review* article, “The Right to Privacy.”⁶⁵ Having her face plastered on the walls of “stores, warehouses and saloons,” around the country had humiliated her, Roberson said.⁶⁶ “She was made sick and suffered a severe nervous shock, was confined to her bed and was compelled to employ a physician.”⁶⁷ Today, the right to be let alone has been deposed by the right to be “seen.” Companies no longer need to surreptitiously appropriate images of teenage girls to sell their products. With scarcely any prompting and without any prospect of compensation, teenage girls now offer up compromising images of

themselves, dreaming and praying that they will be converted into advertisements.⁶⁸ For the 2022 Super Bowl, for example, rather than purchasing a traditional commercial spot, the insurance company State Farm launched a TikTok challenge, soliciting videos showing off users' "talents," the best of which would be "pinned" by the company account, rewarding visibility with hypervisibility.⁶⁹ The videos of teenage girls dancing in their bedrooms came pouring in.

This striking shift is bound up with what Julie Cohen, David Lyon, and others have described as the "participatory turn" in surveillance.⁷⁰ Commercial surveillance environments use various "gamification" techniques to encourage user engagement.⁷¹ People share their locations in real time to participate in Groupon promotions and feed information about their eating, sleeping, and exercising habits into personal fitness applications.⁷² Being surveilled becomes an active process, one that the target of surveillance is conditioned to see as one that benefits her, even when the benefits take the form of invasive commercial appeals.

IV. Targeting women

This state of affairs puts everyone's privacy at risk in ways that may have major ramifications for the possibility of democratic citizenship, but surveillance capitalism may disproportionately harm women. Since the advent of modern mass media, women have been key addressees of advertising, routine shopping for everyday items like groceries being seen as lowstatus "women's work."⁷³ Advertising "targeting" women used to mean ads placed in the print publications or broadcasts where they would most likely be noticed by the female consumers likely to buy a particular product. Entire genres of entertainment were built around this type of advertising, notably the early "soap operas" of the 1930s and 1940s, so named because Procter and Gamble and other household product

manufacturers sponsored them in order to market their wares to housewives listening to the radio in the middle of the day.⁷⁴

Online shopping may be slowly changing shopping's gender. In its early days, the internet attracted more men than women, and surveys suggest that men seem to prefer shopping online.⁷⁵ However, women surpassed men in internet use in 2000,⁷⁶ and have generally been more avid users of social media.⁷⁷ As Facebook has known for years, social media is a powerful tool for rendering women susceptible to advertising by making them despise themselves, to the point where a not insignificant percentage of them have suicidal thoughts that they attribute to Instagram.⁷⁸ To the advertiser, this misery is a goldmine. There is nothing better than a desperately unhappy teenage girl who has been scrolling through her feed for hours, comparing herself with various Kardashians. She is vulnerable, primed to make any purchase that promises to close the gap between the filtered ideal and her mediocre reality.

The evolution of advertising related to reproduction, perhaps the most intimate zone of female experience, makes for an illuminating case study of women under surveillance capitalism. Women's reproductive lives—and the guilt and shame women experience in relationship to their reproductive lives—have been at the heart of advertising strategy at least since the 1950s. Before the internet, back in the heyday of MR in advertising, women were targeted by ads designed to reify traditional gender roles. This was generally accomplished by inculcating or exacerbating women's anxieties about being good enough wives and mothers.⁷⁹ Packard writes about the MR men's attunement to such anxieties during the development of labor-saving cake mixes, the first of which required the home baker to add only tap water, no milk or eggs.⁸⁰ It quickly became clear that this recipe made things *too* easy.⁸¹ Housewives felt guilty, and would often insist on adding milk or eggs anyway.⁸² This would make their cakes fall, and they would blame the mix.⁸³ Several different MR teams came to the conclusion that the mix makers "should

always leave the housewife something to do.”⁸⁴ They were never merely selling cake; they were selling “feminine creativity,” or maternal pride.⁸⁵ Today, such mixes continue to call for the addition of fresh eggs, and the case of the cake mix remains part of the canon for behavioral economists who study the impact of labor on valuation.⁸⁶

The MR men were also obsessed with understanding and channeling women’s desires on an explicitly biological level. One 1950s project of note was a psychiatric study of the emotional states that corresponded to various stages of a woman’s menstrual cycle.⁸⁷ The aim of the study was to determine how advertising could effectively target women at each stage of her cycle.⁸⁸ According to Packard, the study found that “[a]t one phase (high) the woman is likely to feel creative, sexually excitable, narcissistic, giving, loving and outgoing.”⁸⁹ At a “lower” phase, “she is likely to need and want attention and affection given to her and have everything done for her.”⁹⁰

As the women’s movement began to change the way women envisioned themselves participating in society, capitalism was quick to reterritorialize the liberationist ethos of feminism. In the 1970s, the pages of *Ms.* magazine became conduits for advertising targeting the modern “liberated” woman and her reproductive system with ads for contraceptives. Alongside Virginia Slims’ “You’ve Come a Long Way, Baby” spreads, there were ads for the contraceptive cream Conceptrol featuring copy extolling the cream’s efficacy and “actual size” renderings of the product’s disposable applicator, a degree of pictorial frankness that likely would have been considered indecent a generation prior.⁹¹ Another ‘70s ad in *Ms.*, from the group Population Planning, depicted a silhouetted couple facing away from the viewer, gazing into each other’s eyes as gentle ocean waves rolled to shore at their feet. Copy whispered the message “[b]ecause love is a very private matter...” and offered contraceptives “through the privacy of the mail.”⁹² These ads incited litigation, but a strange realignment had taken place. With the help of such

ostensibly progressive organizations as the ACLU and Planned Parenthood, advertising and privacy were no longer positioned as mutually antagonistic. Now that reproductive freedom was at stake, these organizations presented privacy and advertising as being on the same team. Population Planning went to the U.S. Supreme Court to fight for their mail-order distribution model and right to advertise it in college newspapers.⁹³ New York had a law on the books that (1) made it a crime for anyone other than a licensed pharmacist to distribute contraceptives, (2) for anyone to sell or distribute contraceptives to minors, and (3) for anyone to advertise contraceptives.⁹⁴ Population Planning brought an action on its own behalf and on behalf of its potential customers, claiming that, regarding provisions (1) and (2), the New York law unconstitutionally violated their customers' right to privacy and, regarding provision (3), the law violated Population Planning's right to the freedom of speech.⁹⁵

Those defending the law thought it reasonable for the state to ban ads of contraceptives because, *inter alia*, they might be "embarrassing to many."⁹⁶ This argument was not couched in the nomenclature of constitutional privacy, but the invocation of "embarrassment" evinced a nostalgia for a time when a clearer boundary existed between the public and private spheres, when intimate matters were not discussed in mixed company, let alone openly made the subject of commercial appeals. Population Planning's privacy argument made the state officials look like prudes. Citing *Griswold* and *Eisenstadt*, they claimed that by prohibiting contraceptive ads New York had undertaken to "contract the spectrum of available knowledge" about contraceptive options, thereby suppressing information individuals needed when considering "matters so fundamentally affecting a person as the decision whether to bear or beget a child."⁹⁷ In an amicus brief, Planned Parenthood argued that even if Population Planning's ads were not protected as commercial speech, they contained "educational material" that deserved First Amendment protection.⁹⁸ "Clearly," they wrote, "society does have a strong interest in

the availability, relative merits and prices of contraceptive products.”⁹⁹ Planned Parenthood’s brief did not address whether a company’s own ads were the shrewdest or safest place to look for “educational material” about the company’s own products.

Population Planning won on all three points, shoring up the liberal feminist alliance between advertising and privacy rights that had recently been created by the discourse surrounding *Bigelow v. Virginia*.¹⁰⁰ In that 1975 case, the Supreme Court of Virginia had upheld a state law prohibiting ads for abortion services, noting that the purpose of the statute was “to ensure that pregnant women in Virginia who decided to have abortions come to their decisions without the commercial advertising pressure usually incidental to the sale of a box of soap powder.”¹⁰¹ Liberal feminist groups were more concerned about abortion access than about commercial advertising pressures. When the U.S. Supreme Court took up the case, the ACLU argued in an amicus brief that, although they constituted commercial speech, ads for abortion services were entitled to First Amendment protection.¹⁰² Such ads, they argued, provided consumers with essential information.¹⁰³ In its own amicus brief for *Bigelow*, the Center for Women’s Policy Studies argued in support of the abortion services ads on the grounds that “[a]dvertising is an invaluable source of information for consumers.”¹⁰⁴

This may well have been true in the pre-internet era, when it was not possible to look up the location of the closest abortion clinic or the side effects of various contraceptive products in a matter of seconds. Nevertheless, the liberal feminist defense of commercial speech in the realm of reproductive privacy had unfortunate consequences, helping to pave the way for the severely circumscribed capitalist feminism that is ascendant today. While the liberal feminists might not, in the 1970s, have been able to foresee the degree to which the tech companies would come to infiltrate once-private areas of life, they made a grave mistake by

overlooking the looming threat that more radical 1970s feminists saw on the horizon.

V. Visibility over power, access over privacy

The collection of personal data by the government was a matter of significant concern in the 1970s, and the figure of the helpless young mother played a rhetorical role in congressional privacy hearings and popular debates on the subject. During a 1974 congressional hearing on privacy and the collection, use, and computerization of personal data, the assembled lawmakers admitted into the record an article by Barbara L. Kaiser describing the “exploitation” to which new mothers in “socialist” Sweden were subjected as a result of their government’s data collection practices.¹⁰⁵ Each Swede, Kaiser explained, had an identification number assigned to them at birth that was keyed to a vast trove of open and publicly-available personal data maintained by the government.¹⁰⁶ As a result, just “two days after delivery,” Kaiser wrote, the Swedish mother was “flooded with mail addressed to her by name and having the sex of the baby correct, advertising everything possible for the baby, sent out by business concerns that have had access to the [government’s] central lists.”¹⁰⁷

Because the commercial overtures Kaiser described were aided and abetted by a socialist government, the invasion of privacy they represented was treated as a scandal. By the 1980s, however, bombarding a new mother with ads for baby paraphernalia even before she had left the maternity ward was *de rigueur* in the U.S. While it was the consensus of the medical community that breastmilk was the best source of nutrition for infants, formula manufacturers were commonly permitted to distribute free formula samples to new mothers in the hospital to take home with them after giving birth.¹⁰⁸ Some manufacturers mailed free formula coupons to new mothers at home instead.¹⁰⁹ In 1996, Baxter

Healthcare launched a marketing program called “Take Care” that put coupons, ads, and samples of products including diapers and pacifiers in maternity ward admissions kits.¹¹⁰ Mike Balousek, the marketing executive responsible for the initiative was quoted as saying that the maternity ward was the ideal place to pitch to mothers because “[t]he arrival of a baby is often the time in a woman’s life when she is seriously considering a lifestyle change.”¹¹¹ Baxter distinguished its goodie bags from others distributed through hospital rooms by misleadingly suggesting that their samples bore the stamp of the hospital’s approval.¹¹²

In addition to products and product advertising, *salespeople* have had little difficulty getting to mothers before they have even recovered from labor. Photography companies have long paid hospitals for access to maternity wards where they snap photos of newborns, then ask mothers who are likely to be exhausted, euphoric, and possibly heavily medicated to hand over a credit card number in exchange for copies, often without disclosing the cost up front.¹¹³ In 2011, the Walt Disney Company launched its “Disney Baby” campaign in hundreds of American hospitals.¹¹⁴ By partnering with the predatory newborn photography company Our365, Disney gained access to maternity wards, where its representatives would approach new mothers and offer them a free Disney Cuddly Bodysuit, then ask them to sign up for email alerts from DisneyBaby.com.¹¹⁵ Because companies are willing to pay for access to this prime captive audience, women who give birth in poorly-funded hospitals that cannot afford to turn down the extra revenue are more likely to find themselves assailed by salespeople when they might perhaps prefer to be resting or getting acquainted with their newborns without interruption. Since these highly invasive attempts to make money off of new mothers are merely examples of free enterprise, untethered from any socialist bogeyman, they have generated no popular or congressional solicitude comparable to that shown for those unfortunate Swedes. Radical feminists came closest to foreseeing this level of intrusion into

American women's lives when they objected to the mass acquisition and computerization of personal data in the early 1970s. Concerns about privacy were not necessarily the focus of the most prominent movement leaders or the most enduring texts of the era, but they were presciently raised in grassroots newspapers and pamphlets produced by local organizing circles. "It may be argued that the gathering of vast amounts of data and statistics is vital to the smooth functioning of our large and complex society," Margaret Devoe skeptically posited in the feminist 'zine *off our backs*. "How else would private industry have known where to concentrate their effort on selling clothes dryers if the government had not been pressured into asking citizens on the 1970 census whether or not they had a dryer?"¹¹⁶ Devoe predicted an unholy alliance between the government and private industry, one that would work to gradually erode women's free will. "Even if you can fight an ad campaign," she wrote, "a much more important consideration is that this accumulated information can and will be used to control you in any other way the government or any agency sees fit."¹¹⁷ Ellen Willis, writing for Shulamith Firestone's *Notes from the Second Year*, saw targeted advertising less as an instrument of mind control or "psychic manipulation" than as a tool for "reinforc[ing] the ideology and therefore the reality of male supremacy—of the economic and sexual subordination of women to men, in the latter's objective interest."¹¹⁸ Most of the "consuming," women do, Willis argued, "is actually labor, specifically part of women's domestic and sexual obligations."¹¹⁹

This advertising-hostile vision of feminism did not prevail. Instead, liberal feminists begging for the equal opportunity to be targeted by advertising became the loudest voices in the movement.¹²⁰ In 1990 Gloria Steinem, who remains a beloved cultural icon today, wrote in *Ms.* that the reason that publication had intermittently struggled financially was because it had a difficult time persuading advertisers that it was worth it to market United Airlines flights, American Express cards, and Absolut Vodka

to women, given the demographic's lesser independent purchasing power.¹²¹ Steinem touted it as a feminist victory that the magazine finally featured full-page spreads advertising these "masculine" products and others like them.

Taking the line the ACLU and Planned Parenthood took in the 1970s cases about ads for contraception and abortion, Steinem wrote that "[w]hen Ms. began, we didn't consider not taking ads," as an important goal of the magazine was "providing a forum where women and advertisers could talk to each other and improve advertising itself."¹²² After all, she said, advertising "was (and still is) as potent a source of information in this country as news or TV and movie dramas."¹²³ While this argument made some sense in the context of reproductive care in the preinternet era, it is a rather inscrutable one when the subject of the ad in question is vodka. Instead of considering the possibility that advertising's stranglehold on the publishing industry ought to be broken, Steinem asked for "better" ads, by which she meant ads that were more representative of a diverse readership, featuring mascara models of different races, for example.¹²⁴

The liberal feminists won this fight, but it was a pyrrhic victory. In Nancy Fraser's terms, feminists traded "redistribution" for "recognition."¹²⁵ Radical feminists "saw their struggles as multidimensional, aimed simultaneously against economic exploitation, status hierarchy, and political subjection," Fraser says.¹²⁶ To them, "feminism appeared as part of a broader emancipatory project, in which struggles against gender injustices were necessarily linked to struggles against racism, imperialism, homophobia, and class domination, all of which required transformation of the deep structures of capitalist society."¹²⁷ Liberal feminists turned away from this complex and ambitious project, subordinating social struggles to cultural struggles, and repressing socialist memory.¹²⁸ They became some of capitalism's most passionate champions, taking to the productivist pressures of neoliberalism with the zeal of the converted.¹²⁹ As Albena

Azmanova has shown, the success of feminist strategies targeting inclusion have come at a price.¹³⁰ “Not only has this model of well-being remained unquestioned,” she argues, “but it also has been given added valorization, as inclusion within it has become the telos of justice struggles (and with this the paragon of justice).”¹³¹ The many superficially progressive distractions of neoliberal feminism only shore up the values of the existing economic order: economic growth, efficiency, and individualism.¹³² “Economies of visibility,” as Sarah Banet-Weiser puts it, “fundamentally shift politics of visibility so that visibility becomes the end rather than a means to an end.”¹³³

Today, the clothing company Aerie runs ads featuring women with visible disabilities and illnesses, including a woman with Down syndrome, a woman in a wheelchair, and a woman wearing her ostomy pouch.¹³⁴ Victoria’s Secret recently cast its first lingerie model with Down syndrome.¹³⁵ While the unblemished sylph is still the standard in high-fashion advertising, more and more ready-to-wear companies are casting larger models who have freckles and maybe even a few crooked teeth. Having demanded “better,” more “representative” advertising, many women are taken in by such corporate strategies, rewarding companies like Aerie with their cash and the free publicity that comes with celebratory social media shares and re-posts.¹³⁶ For the liberal feminist’s daughter, the neoliberal feminist, representation—or “empowerment”—equals power. As performance theorist Peggy Phelan reminds us, however, “[i]f representational visibility equals power, then almost-naked young white women should be running Western culture. The ubiquity of their image, however, has hardly brought them political or economic power.”¹³⁷ Having chosen visibility over power and access over privacy, capitalist feminists now lack the vocabulary to push back against corporate surveillance, even when it reaches into territory where it is most emphatically unwelcome. Today in the realm of reproductive advertising, as educated American women are increasingly opting to postpone or

forego having children, women of a certain age are now targeted by online ads pushing them to invest in reproductive technologies that will increase their chances of conceiving.¹³⁸ The egg-freezing service Extend Fertility runs Instagram ads that juxtapose cartoon images of everyday yuppie indulgences—a manicure, an açai bowl—with a sassy pink human egg puckering her Kewpiedoll lips.¹³⁹ “If you can afford this,” the ad’s caption runs, indicating the manicure, “you can afford this,” indicating the egg.¹⁴⁰ An animated video created for the same campaign features a pair of the eggs, one pal reclining in a hammock, coquettishly fluttering her eyelashes as she reassures the viewer in a worldly voice, “Having a baby doesn’t have to feel like now or never...Cause when you freeze your eggs, all your fertility worries are ova easy!”¹⁴¹ Other companies take a slightly less infantile approach. The “femtech” company Modern Fertility offers a home testing kit that allows women to measure their own hormones.¹⁴² Their ads feature more sober renderings of a “Before 35” ovary filled with ripe red eggs contrasted with increasingly less populous “Age 36-40” and “Age 41-45” ovaries. Finally, the “Age 46-50” ovary is shown to contain only a couple of sad, shriveled-up, grey eggs. “Not a ‘wait and see’ kinda gal?,” the copy asks, “We get it.”

Investors have identified the fertility sector as a promising one, funneling upwards of \$646 million into such companies since 2018.¹⁴³ While today’s ads for fertility-enhancing products and services are invariably couched in terms of female “empowerment,” they also traffic in alarm clock and hourglass imagery, subliminally—and sometimes explicitly—seeking to remind nontraditional women that biology is destiny. This type of advertising is insidiously reactionary, evoking the backlash generated by the feminism of the 1970s.¹⁴⁴ These ads are also misleading, promising far more certainty than their products are currently able to deliver, and failing to disclose their myriad, under-researched safety risks.¹⁴⁵ Given the long history of women suffering at the hands of

profit-seeking male gynecologists, such ads seem not only profoundly tasteless, but potentially dangerous as well.¹⁴⁶

VI. Conclusion

Women have objected to “creepy” targeted fertility ads, but it seems likely that the companies responsible for them will simply absorb this “feedback” and use it to make their ads “better.”¹⁴⁷ Before the surveillance capitalism era, a woman could at least seek out the kind of publication that she felt was in line with her “values” and find advertising that took those values into account. Women reading *Ms.* found ads for contraceptives between profiles of Bella Abzug and feature essays by Kate Millet. Women reading the *Ladies’ Home Journal* were more likely to see ads for feminine sprays and deodorants that promised to make their vaginas smell less vaginal alongside articles describing how a mother of five had saved her marriage by undergoing vaginal tightening surgery.¹⁴⁸ Today, Facebook goes ahead and *tells* women what their values are, deciding what a woman wants—or what she ought to want—based on the data it has extracted from her and those the algorithms assume are similar to her.¹⁴⁹ While biased algorithms may be lamentable, for feminists to limit themselves to fighting for, as Wark puts it, “an equal right to be exploited by asymmetries of information,” would be to replicate the tactical errors of previous generations of feminists who believed that targeted advertising would be crucial to their liberation.¹⁵⁰

Feminists have criticized privacy as a concept that has historically been used to shield male violence against women from public scrutiny and intervention, with some even going so far as to call for the outright elimination of the private sphere.¹⁵¹ Others have argued that while some division between private and public life must be preserved, we must reject the separate spheres as they have historically been defined and recognize the interconnectedness of public and private life.¹⁵² Though privacy has

long been a prison for women, the incursions of Big Data make the former approach less attractive. Any meaningful resistance to capitalism today will be bound up with the preservation of privacy, which begins with the preservation of our ability to feel violated when the barrier between private and public is breached. The vectoralists have much to gain by numbing women to violations of that barrier, by convincing them that algorithmic intelligence and consciousness are more or less continuous. Pushing back will involve reintroducing friction and discontinuity. Women will need to insist on certain aspects of their lives (i.e. online shopping) becoming marginally harder in order to ensure that the remaining aspects do not become hell. With a second generation presently being raised on the idea that privacy is obsolete, it is clear that privacy must be re-envisioned and revalued rather than cast aside as beyond rehabilitation.¹⁵³

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