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Recommended Citation

Robin A. Lenhardt and Kimani Paul-Emile, *Skimmed Milk: Reflections on Race, Health, and What Families Tell Us About Structural Racism*, 57 Cal. W. L. Rev. 231 (2021)

Available at: https://ir.lawnet.fordham.edu/faculty_scholarship/1144

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SKIMMED MILK: REFLECTIONS ON RACE, HEALTH, AND WHAT FAMILIES TELL US ABOUT STRUCTURAL RACISM

R.A. LENHARDT* & KIMANI PAUL-EMILE**

INTRODUCTION

Andrea Freeman's excellent book, *Skimmed: Breastfeeding, Race, and Injustice*, offers a complex and nuanced account of the racial politics of breastfeeding and the problem of food insecurity more broadly. Freeman analyzes these issues through the lens of the Fultz family, whose quadruplet daughters sit at the center the book. Weaving together several strands of analysis, Freeman tells a compelling story of the structural inequities the Fultz family endured,

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including the various factors at play in their ultimately tragic lives. Freeman's discussion draws upon pejorative perceptions of Black motherhood, the laws and policies that create barriers for Black women seeking to breastfeed their children, and predatory marketing strategies employed by baby formula manufacturers. Through this narrative, Professor Freeman encourages readers to consider the health inequities that shaped the girls' lives from birth and the circumstances that affected their family unit.

Part I of this essay focuses on the Fultz quadruplets. This section considers, and puts into historical context, the exploitation the quadruplets experienced at the hands of their White physician and the long-term impact that it had on their health. Part II broadens the lens to consider the Fultz family as a whole. Freeman's expert storytelling and analysis reveals how conceptualizing the family unit as an important measure for understanding structural racism offers important insights into how inequality works. In particular, this section addresses the COVID-19 pandemic. The tragically high numbers of Black and Latinx deaths illustrate how the multiple systems and structures both inform and curtail the lives and families of people of color decades after the Fultz quadruplets' birth. Finally, this essay briefly concludes by discussing the timeliness of *Skimmed* and this symposium.

I. LEGACIES OF HEALTH EXPLOITATION

Freeman's account of the Fultz quadruplets' exploitation begins at their birth with the actions of their pediatrician, Dr. Fred Klenner, an avowed White supremacist and Nazi sympathizer. Dr. Klenner injected each of the girls with fifty milligrams of vitamin C within hours of their birth and without their parents' consent (p. 17). These injections, as Freeman noted, were entirely "unnecessary" and "a radical departure from standard medical practice." Indeed, the girls were given these shots, not to advance their health but rather to test Dr. Klenner's theory that "vitamin C could cure polio and twenty-nine other diseases" (p. 17). Sadly, this needless and ultimately fruitless medical intervention continued throughout much of the girls' lives. Freeman's compelling exposition of Dr. Klenner's medical exploitation of the quadruplets may give some readers pause. Yet it is, in fact, part of this country's long and tortured history of

medicine's mistreatment of Black people that continues to shape their relationship to the medical profession today.

Physician and patient interactions are characterized by a code of medical ethics that emphasizes the patients' interests and the physicians' obligations. The ethics code's foundational principles are nonmaleficence, respect for persons, beneficence, and justice.¹ The concept of nonmaleficence is derived from the Hippocratic Oath, which commands physicians to first "do no harm."² Respect for persons is the notion that patients must be empowered to make autonomous and informed healthcare decisions. Beneficence refers to healthcare providers' efforts to ensure their patients' wellbeing while balancing the risks attendant to providing healthcare.³ Justice requires the fair distribution of scarce resources and respect for the rights of each patient.⁴ These commitments form the normative backdrop for a physician's duty to provide care, and yet they have historically been denied to Black people.

Until the mid-twentieth century, the medical care Black people typically received varied from benign paternalism to experimentation without consent or the prospect of therapeutic benefit.⁵ Medical professionals often assumed Black patients lacked the interest and ability to participate in medical decision-making. Thus, physicians seldom advised Black patients about important therapeutic treatment options⁶ and frequently withheld information regarding patients' prognoses, particularly when the chance of survival was low.⁷ Additionally, physicians refused to inform patients when exams, tests,

1. Kimani Paul-Emile, *Patient Racial Preferences and the Medical Culture of Accommodation*, 60 UCLA L. REV. 462, 472 (2012).

2. *Id.*

3. *Id.*; see also Raanan Gillion, *Medical Ethics: Four Principles Plus Attention to Scope*, 309 BMJ 184, 185 (1994).

4. See TOM L. BEAUCHAMP, ET. AL., *PRINCIPLES OF BIOMEDICAL ETHICS* 326–27 (1983).

5. See DAVID BARTON SMITH, *HEALTH CARE DIVIDED: RACE AND HEALING A NATION* 25 (1999).

6. *Id.* at 151.

7. Naoko T. Miyaji, *The Power of Compassion: Truth-Telling Among American Doctors in the Care of Dying Patients*, 36 SOC. SCI. & MED. 249, 261–62 (1993).

or procedures were conducted primarily or solely to educate medical students.⁸

Like the Fultz quadruplets, Black people and members of other disadvantaged or vulnerable groups were often used as material for experimentation.⁹ While informed consent is the cornerstone of the relationship between patient and healthcare provider, history is replete with examples of experimentation on Black people without their consent.¹⁰ Perhaps the most infamous example is the Tuskegee syphilis study. There, nearly four hundred Black men who thought they were receiving free medical treatment for syphilis were instead systematically denied known, effective medical remedies.¹¹ The men were unaware that they were being used for research, not diagnostic purposes.¹² Conducted for nearly 40 years to observe the effects of untreated syphilis, the Tuskegee study was the longest experiment in medical history that involved withholding treatment from human subjects.¹³

Readers can infer from Dr. Klenner's unwillingness to obtain informed consent from the Fultz family that he likely did not intend to share whatever profits he may have received had the unsuccessful experiments performed on the quadruplets borne fruit. Indeed, Black

8. Mark A. Rodwin, *Patient Accountability and Quality Of Care: Lessons From Medical Consumerism And The Patients' Rights, Women's Health And Disability Rights Movements*, 20 AM. J.L. & MED. 147, 151 (1994).

9. See W. MICHAEL BYRD & LINDA A. CLAYTON, AN AMERICAN HEALTH DILEMMA: RACE, MEDICINE, AND HEALTH CARE IN THE UNITED STATES 1900-2000, at 206 (2002) ("Black, public aid populations became 'training material for the medical school and research infrastructure'").

10. Londa Schiebinger, *The Hidden Stories of Medical Experimentation on Caribbean Slave Plantations*, THE CONVERSATION (Aug. 14, 2017, 9:21 PM EDT), <https://theconversation.com/the-hidden-stories-of-medical-experimentation-on-caribbean-slave-plantations-81600>.

11. See JESSICA W. BERG ET AL., INFORMED CONSENT: LEGAL THEORY AND CLINICAL PRACTICE 255 (2d ed. 2001).

12. See *id.* The Tuskegee Syphilis Study continued well after penicillin became available to treat the disease. *Id.* For more information about the study, see Fred D. Gray, THE TUSKEGEE SYPHILIS STUDY: THE REAL STORY AND BEYOND (1998); JAMES H. JONES, BAD BLOOD: THE TUSKEGEE SYPHILIS EXPERIMENT (1981); William J. Curran, *The Tuskegee Syphilis Study*, 289 NEW ENG. J. MED. 730 (1973); Robert M. White, *Unraveling the Tuskegee Study of Untreated Syphilis*, 160 ARCHIVES INTERNAL MED. 585 (2000).

13. See SMITH, *supra* note 5 (the study ran from 1932 to 1972).

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people have rarely enjoyed the benefits that have flowed from research conducted on Black research subjects in the name of scientific or medical advancement. In 1951, for example, physicians biopsied cancerous cells from Henrietta Lacks without her consent.¹⁴ From those cells they derived the HeLa cell line, which would become the foundation of a multibillion-dollar biotechnology industry. Lacks and her family received no financial compensation for the medical and pharmaceutical innovations that emerged from her cell line.¹⁵

Moreover, the healthcare providers who exploit Black people are often later lauded for their accomplishments, as was the case with Dr. J. Marion Simms. Considered “the father of modern gynecology,” Dr. Simms conducted medical experiments on enslaved Black women without their consent or anesthesia.¹⁶ In his own notes, he observed “the agony” of one patient upon whom he conducted surgery “was extreme” and he “thought that she was going to die.”¹⁷ Nevertheless, the statue memorializing his achievements, erected in 1894, was only removed from Central Park in 2018 in the wake of the Black Lives Matter movements.¹⁸

Such experimentation, however, is not confined to a distant past. Instead, such testing has taken place as recently as 1990, when researchers at a highly regarded United States university recruited Black boys for a study designed to test a theory regarding a possible genetic etiology of aggressive behavior.¹⁹ Violating numerous rules implemented to protect human research subjects, the researchers limited their recruitment to Black boys only. Researchers also used financial incentives to encourage parents to enroll their sons, held the

14. See REBECCA SKLOOT, *THE IMMORTAL LIFE OF HENRIETTA LACKS* 31–33 (2010)

15. *Id.* at 225, 233.

16. Meagan Flynn, *Statue of Father of Modern Gynecology, Who Experimented on Black Women, Removed from Central Park*, WASH. POST (April 18, 2018, 3:19 AM PDT), <https://www.washingtonpost.com/news/morning-mix/wp/2018/04/18/statue-of-father-of-gynecology-who-experimented-on-enslaved-women-removed-from-central-park/>.

17. *Id.*

18. *Id.*

19. HARRIET A. WASHINGTON, *MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTATION ON BLACK AMERICANS FROM COLONIAL TIMES TO THE PRESENT* 272 (2006).

boys overnight without their parents, withheld all medicines (including asthma medications) and water from the boys, drew blood hourly, and administered a drug known to increase serotonin levels, which had been associated with aggressive behavior.²⁰

The long-term effects of these unethical experiments are also cause for concern. Questions remain about whether the cancers that ultimately claimed the lives of the Fultz quadruplets can be linked to the vitamin C shots Dr. Klenner began administering to them in their infancy. Such medical conduct has serious consequences well beyond the particular manufactured treatment at issue in the quadruplets' case. It significantly shapes how physicians and other caregivers think about Black patients and their needs. For example, it is no accident that today Black patients routinely receive less information, empathy, and attention from their physicians regarding their medical care than White patients.²¹ Black patients are also less likely to receive necessary medical services than White patients with similar complaints and symptoms.²² This all contributes to long-standing and well documented health disparities among racial groups.²³

20. Darcell P. Scharff et al., *More Than Tuskegee: Understanding Mistrust about Research Participation*, 21 J. HEALTH CARE POOR & UNDERSERVED 879, 880 (2010).

21. Joseph V. Sakran et al., *Racism in Healthcare Isn't Always Obvious*, SCI. AM. (July 9, 2020) <https://www.scientificamerican.com/article/racism-in-healthcare-isnt-always-obvious/>.

22. Khiara M. Bridges, *Implicit Bias and Race Discrimination in Health Care*, *Human Rights Magazine*, ABA, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/racial-disparities-in-health-care/ (last visited Mar. 20, 2021).

23. See, e.g., Irene V. Blair et al., *Assessment of Biases Against Latinos And African Americans Among Primary Care Providers and Community Members*, 103 AM. J. PUB. HEALTH 92 (2013); Glenn Flores, *Technical Report — Racial and Ethnic Disparities in The Health and Health Care of Children*, 125 PEDIATRICS e979 (2010); Susan E. Puumala et al., *The Role of Bias by Emergency Department Providers in Care for American Indian Children*, 54 MED. CARE 562 (2016); Vickie L. Shavers et al., *The State of Research on Racial/ Ethnic Discrimination in The Receipt of Health Care*, 102 AM. J. PUB. HEALTH 953, (2012); Alexander R. Green et al., *Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients*, 22 J. GEN. INTERNAL MED. 1231, 1235 (2007) (finding that physicians' implicit biases showed strong associations with their decisions whether to perform medical procedures on particular patients); Adil H. Haider et al., *Association of Unconscious Race and Social Class Bias with*

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Finally, the legacy of actions similar to Dr. Klenner's exploitation of the Fultz quadruplets is also evident in many Black Americans' mistrust of the medical profession today.²⁴ The novel coronavirus has disproportionately ravaged Black communities, and yet, Black people—who may stand to gain the most from an experimental vaccine—may be least likely to volunteer to take it.

II. FAMILY, STRUCTURAL RACISM, AND WELL-BEING

A. *The Fultz Family as a Lens on Structural Racial Inequality*

For reasons outlined in the previous section, Freeman's book provides deep and critical insight into the racial exploitation individuals like the Fultz quadruplets unfortunately endure. However, it would be a mistake to understand Freeman's intervention to sound in that valence alone. Freeman's deep, textured account of the Fultz family as a whole reminds readers to be attentive to the broad range of systems and structures that impair family functioning. These systems work to "lock-in" kinship units of color into inequality in ways that affect their health and access to wealth, key institutions, and opportunities.²⁵ Ultimately, as is true with the Fultz family and so many others, these systems diminish the well-being of families of

Vignette-Based Clinical Assessments by Medical Students, 306 J. AM. MED. ASS'N 942, 949 (2011) (analyzing unconscious race and social-class bias among medical students and finding that 69% of medical students surveyed exhibited implicit preferences for White people); William J. Hall et al., *Implicit Racial/Ethnic Bias Among Health Care Professionals and Its Influence on Health Care Outcomes: A Systematic Review*, 105 AM. J. PUB. HEALTH e60, e72 (2015) (finding widespread implicit racial biases among healthcare providers); Janice A. Sabin & Anthony G. Greenwald, *The Influence of Implicit Bias on Treatment Recommendations for 4 Common Pediatric Conditions: Pain, Urinary Tract Infection, Attention Deficit Hyperactivity Disorder, and Asthma*, 102 AM. J. PUB. HEALTH 988, 992 (2012) (finding pediatricians demonstrating pro-White implicit biases were more likely to prescribe pain medication to White patients than black patients); Joshua H. Tamayo-Sarver et al., *Racial and Ethnic Disparities in Emergency Department Analgesic Prescription*, 93 AM. J. PUB. HEALTH 2067, 2067 (2003).

24. See Bernice Roberts Kennedy, et. al., *African Americans and their Distrust of the Health Care System: Healthcare for Diverse Populations*, 14 J. CULTURAL DIVERSITY 56 (2007).

25. See Daria Roithmayr, *Locked In Segregation*, 12 VA. J. SOC. POL'Y & L. 197 (2004).

color. Especially where Black caregiving units are concerned, these systems also stigmatize them—undermining their overall standing and functioning in their local and national communities.²⁶

Some will read *Skimmed* and focus entirely on the Fultz sisters' treatment at the hands of a racist physician and company, like Dr. Klenner and Pet Milk. However, Freeman clearly focuses important attention on the practices and systems at work in the domain of breastfeeding and the benefits this first food can provide to infants, most especially those who are Black (pp. 35–39). Freeman also gestures productively to other systems and structures that bear on family well-being.²⁷ One sees this in the relatively brief, but important discussion of the quadruplets' parents, siblings, and extended family members in Chapter 1 (pp. 1–17) and, to a lesser extent, Chapters 5 and 6 of the book (pp. 113–61).

The tragic story of the Fultz quadruplets, as unique and singular as it is, simply cannot be understood fully without some insight into the broader context from which it emerged. Freeman rightly concentrates on the Fultz sisters' lives in the aftermath of their complicated association with Dr. Klenner and Pet Milk, which was marked by exploitation, manipulation, and mistreatment (pp. 17–33). But, these unique sisters' story could have been very different. Indeed, had their circumstances at birth been otherwise, their story may never have been told.

Like many Blacks in the Jim Crow South, the Fultz sisters were born into extreme poverty and racial disadvantage. The girls' father, "Pete," was a tenant farmer who—while marginally better off than Black sharecroppers in the hierarchy of the rural South—never earned more than five hundred dollars in a year (pp. 16, 21). Their mother, Annie, who was twenty-years his junior, had numerous disabilities due to a childhood illness that left her unable to contribute to the farming work (pp. 9, 17). To further complicate matters, the quadruplets joined a family that already had several older children and

26. See R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803 (2004)

27. Maxine Eichner, *The Supportive State: Government, Dependency, and Responsibility for Caretaking*, in CARE ETHICS AND POLITICAL THEORY 87, 92–94 (Maurice Hamington & Daniel Engster eds., 2015); CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS I-XI* (2014).

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few, if any, of the amenities one might need to accommodate the needs of such a large family (p. 16). For example, their home was without electricity, and the family had no access to a vehicle (p. 16). Even accessing the family abode proved extremely difficult (p. 16).

Ultimately, as Freeman painfully details, the Fultz family entered into a contract with Pet Milk that proved to be the undoing of their family (pp. 20, 22). In exchange for granting Pet Milk access to their newest members, Pete and Annie Fultz received the promise of healthcare for their family and the opportunity to send their daughters to Bennet College, a historically Black college known for its educational program and history of producing Black women leaders (pp. 20–21). The family also received a plot of land that, at least in theory, could have been farmed by Pete Fultz and a modest home with functioning appliances, unlike anything the family had ever enjoyed.

It soon became clear, however, that Pet Milk and Dr. Klenner received the better end of the arrangement. Among other things, the farmland that the Fultzes received was essentially fallow, and the family's overall circumstances did not improve in any appreciable way. Sadly, they remained locked into invisible but fully functioning education, employment, housing, and policing systems and structures long at work in the deep South that prevented them from meaningfully changing their circumstances.²⁸ The family remained poor and without the necessary resources to improve the opportunities available to their children.

Ironically, it was Pete and Annie Fultz's inability to escape the structural racism constraining their lives that led to their legal separation from the Fultz quadruplets. Pet Milk and Dr. Klenner were successful in their quest to obtain total control of the quadruplets and their lives by seeking redress in court. A judge, sympathetic to their profit-driven goals, granted Pet Milk's plea to remove the girls from their childhood home on the grounds that their parents were too impoverished to care for them properly (p. 22). Not insignificantly, it appears to have gone unnoticed that Pet Milk and Klenner, whose father-in-law owned the land ultimately given to the Fultz family, played a role in ensuring the family's financial circumstances never

28. See R. A. Lenhardt, *Race Audits*, 62 *Hastings L.J.* 1527 (2011) (discussing, *inter alia*, structural inequality).

really improved (p. 22). This was regarded as unimportant even though it had severe consequences for the Fultz family.

B. What Families of Color Can Teach Us About How Structural Racism Works

The portrait *Skimmed* paints of the Fultz family reinforces the idea that families of color are critical units of analysis when it comes to understanding how structural racial inequality works in American society.²⁹ In the wake of police-related deaths of Black men and women in Minneapolis and Louisville, focus has increasingly been trained on structural inequality. That attention has only intensified with the advent of the novel coronavirus and the world-wide pandemic it spawned.

Significantly, much of the COVID-19 scholarship focuses on the virus's effects on families, particularly those of color, which are more likely than other groups to have members who are frontline workers in the battle against the virus.³⁰ Some scholarship centers on employment and financial well-being. For example, a recent report by the Urban Institute explored the adverse effects of COVID-19 on Black and Latinx people, given their likelihood of working in risky or low-wage work and being unemployed without the wealth and cushion of savings that other groups enjoy.³¹ To address these and other problems, the report recommended policy changes concerning essential workers, as well as initiatives around rent stabilization, pay protections, and new job programs.³²

Similarly, other research concentrates more directly on children in this context. For example, thinktanks like Columbia's Center on Poverty and Social Policy investigated the intersection of various inequalities and their impact on particularly vulnerable groups, such as Black children, who are more likely to live in poverty and experience

29. See R.A. Lenhardt, *The Family and Racial Inequality* (April 11, 2021) (unpublished manuscript) (on file with author).

30. See Steven Brown, *How Covid-19 is Affecting Black and Latino Families' Employment and Financial Well-Being*, URBAN INST., (May 6, 2020), <https://www.urban.org/urban-wire/how-covid-19-affecting-black-and-latino-families-employment-and-financial-well-being>.

31. *Id.*

32. *Id.*

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the accompanying negative consequences.³³ Still other important work, such as the work done at the Brookings Institute, endeavors to map the effects of discrimination in public policy, among other things.³⁴

These and other examples of necessary research in our current context are vital and hold promise where resolving the adverse effects of structural racial inequality is concerned. They reflect meaningful attempts to corral the shape-shifting effects of racial inequality and develop solutions. However, too much of this work has yet to internalize fully the insights Freeman provides through her narrative of the Fultz family. Freeman's book sets the table for a holistic approach to thinking about the inequality and challenges Black families face. Instead of training attention on a particular aspect of inequality, *Skimmed* promotes an approach that, in light of our history on race, looks at the family as an organism comprised of multiple layers of overlapping inequalities that undermine family well-being. Exploring this approach may require looking at health, education, criminal justice, employment, and more. This deeper account of what families of color survive better delineates the challenges they face day to day. Significantly, the approach just described also points to solutions that are multi-faceted. To this extent, they can be responsive to the challenges faced by Black families and other families of color on the ground, a population Critical Race theorists call "the bottom."³⁵

CONCLUSION

Professor Andrea Freeman's amazing book, *Skimmed: Breastfeeding, Race, and Injustice* has something for all readers, but especially those concerned with race, medicine, and family well-being. For us, the timing of Freeman's intervention and this

33. Kelly Glass, *Black Families Were Hit Hard by the Pandemic. The Effects on Children May Be Lasting*, N.Y. TIMES (June 29, 2020), <https://www.nytimes.com/2020/06/29/parenting/coronavirus-black-children-inequality.html>.

34. Andre M. Perry *et. Al*, *Mapping Racial Inequality and Covid-19 Underscores Policy Discrimination Against Black Americans*, BROOKINGS INST. (Apr. 16, 2020), <https://www.brookings.edu/blog/the-avenue/2020/04/16/mapping-racial-inequity-amid-the-spread-of-covid-19/>.

35. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323 (1987).

symposium could not be better. As we write, the country is readying itself to welcome a new President, Joseph Biden, and the first woman and person of color to hold the office of Vice President, Senator Kamala Harris. As they take office, they would do well to read and get others to read Freeman's contribution, as it sits at the intersection of so many of the initiatives that they champion. In what we hope will be one of many more books by our friend and colleague, Freeman managed to offer new ways of not only thinking about medicine, but also issues of race and gender.