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Foreword: The Milkmaid's Tale

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SKIMMED: BREASTFEEDING, RACE, AND INJUSTICE. By Andrea Freeman. Stanford, Cal.: Stanford Univ. Press. 2019. Pp. 304. \$28.00.

THE MILKMAID'S TALEMELISSA MURRAY[†]

INTRODUCTION

I came of age as a mother in the heart of breastfeeding culture. In the Bay Area, to be exact—ground zero for the La Leche League, doulas, and lactation consultants. It went without saying that formula was verboten. In my prenatal classes, it was discussed in the same tones with which one might discuss opioid abuse. As expectant parents, we were told repeatedly that “breast is best” and that our

[†] Frederick I. and Grace Stokes Professor of Law and Faculty Director of the Birnbaum Women's Leadership Network, New York University School of Law. I am grateful to Bennett Capers, Laurel Fletcher, Andrea Freeman, and Caitlin Millat for helpful suggestions and feedback. This foreword benefited enormously from engagement with the other symposium contributors at an online event hosted by the Law Review. I am especially indebted to Andrea Freeman, whose insightful and thought-provoking work provided the occasion for this symposium. Hilarie Meyers provided terrific research assistance.

failure to nurse our infants exclusively for at least a year would result in obesity, diabetes, lower intelligence, and general miscreance.¹

At first, the obvious opposition to formula surprised me. After all, my mother—a registered nurse who had only taken three weeks of parental leave after my birth—had used formula and, according to her, I “*had turned out fine.*” My mother-in-law, also a working mother, made the same claim—though more fervently because her son (my husband) had turned out *even better than fine*, and I was lucky to marry him. The evidence was all around me—a generation of formula-fed babies who were not saddled with chronic illnesses and poor health, and in fact, were incredibly successful.

In one of my prenatal classes, I raised the question of formula. That was a mistake. I had barely uttered the word “formula” when eight heads swung my way in horror. One of my expectant classmates actually clutched her pearls. I pressed on: “Why *is* formula so bad? Lots of mothers use it. What if you have difficulty nursing? What if you have to work and can’t take time off to pump? What if you don’t have breasts?”

The last question was the one that did me in. They thought I was being glib, but it was an honest question. A friend, and recent new mother, previously had a double mastectomy and was now using formula to feed her infant. But even as I tried to marshal this anecdotal evidence that not everyone *could* breastfeed and sometimes formula *was* necessary, I could see that my arguments were falling on deaf ears. The instructor’s nostrils flared with righteous indignation: “That is *not* funny! Everyone can breastfeed—you just have to *want* to. It is a choice to *want* the best for your child—a choice to be

1. Breastfeeding is associated with numerous health benefits for children, including reduced risk of chronic illnesses and obesity during childhood and adolescence. *E.g.*, Sevin Altinkaynak et al., *Breast-feeding Duration and Childhood Acute Leukemia and Lymphomas in a Sample of Turkish Children*, 42 J. PEDIATRIC GASTROENTEROLOGY & NUTRITION 568, 570 (2006); Sandrine Péneau et al., *Breastfeeding, Early Nutrition, and Adult Body Fat*, 164 J. PEDIATRICS 1363, 1366 (2014); Matthew W. Gillman et al., *Risk of Overweight Among Adolescents Who Were Breastfed as Infants*, 285 J. AM. MED. ASS’N 2461, 2465 (2001). That said, there is significant debate about the purported health benefits of breastfeeding to both children and women, with some scholars arguing that these benefits have been overstated. *See generally* SUZANNE BARSTON, BOTTLED UP: HOW THE WAY WE FEED BABIES HAS COME TO DEFINE MOTHERHOOD, AND WHY IT SHOULDN’T (2012).

unselfish and put your baby's needs before your own." She would brook no dissent. This was about *personal* choices and commitments, as opposed to any biological or systemic impediment. All around me, the other expectant mothers nodded furiously in agreement, a veritable Greek chorus. "Breast is best," they intoned wisely, if robotically.

Chastened, I took their words to heart. When my first child was born, I nursed exclusively. To be sure, it was not particularly difficult—the baby nursed easily, and I had the luxury of paid maternity leave, which allowed me to basically sit around my home, an on-demand dairy for eight months. When I returned to work, my faculty office afforded me both privacy to express milk and the convenience of a mini-fridge for storage—not to mention an academic schedule that accommodated hour-long pumping sessions. Suffice to say, I was a believer. Breast *was* best—and the proof was my thriving baby.

But my faith would soon be tested. My second child did not care that "breast was best." He was an itinerant nurser, and as a consequence, was not gaining weight. Concerned, our pediatrician broached the prospect of formula. Predictably, I was resistant. "Breast is best!" I crowed reflexively, proffering photos of my robust four-year-old as irrefutable evidence. The pediatrician smiled tightly. Yes, breast was best, but "this child needs to eat. He's losing weight when he should be gaining. This is not working."

After five years of being steeped in Berkeley's intense breastfeeding culture, I was not yet ready to give up the ghost. That very afternoon, I engaged a high-priced lactation coach to help the baby and me "get into a pattern of regular, on-demand nursing." After four or five frustrating sessions, it was clear that the pediatrician was right—this was not working. Heartsick, I relented, reluctantly agreeing to supplement breastfeeding with formula feeding.

To my utter dismay, the formula was an immediate success. While my baby had been indifferent to the watery gruel of breastmilk that I produced, he happily accepted bottles of thick, creamy formula. To the doctor's satisfaction, he gained weight quickly, growing chubbier, rosier, and more even-tempered. He slept more. And when he slept more, I slept more. The juggling of a toddler and an infant somehow seemed less frenetic. My voice shed the jagged edge of exhaustion that had dogged me since the delivery.

But as my son's interest in formula grew, so did his disinterest in nursing. Yet again, I would not give up. Seeing his happy embrace of bottle-feeding, I began expressing breastmilk in order to bottle-feed it to him. But without regular bouts of nursing, my milk supply, already patchy, further dwindled. Desperate to maintain my supply, I brewed pungent teas of fenugreek and other herbs aimed at boosting milk production. When I was not hooked up to a breast pump, I was downing some truly distasteful herbal concoction—all in an unavailing effort to continue producing milk. I had turned myself into a milkmaid because breast was best, and I would not—*could not*—give up.

The racial and class dynamics of the situation were not lost on me. The breastfeeding culture in which I had immersed myself was largely white and privileged, from the other expectant mothers to the doulas and lactation consultants who coached me through “latching” and proper milk storage. Despite claims that breastmilk was less expensive than formula, the cost of breastfeeding was enormous—from lactation classes and coaching to the hospital-grade breast pump I purchased in a last-ditch effort to maintain my milk supply. In my breastfeeding odyssey, I was often the only Black woman in the room. Nevertheless, I persisted. In a world where Black mothers are often stereotyped as bad mothers, and breastfeeding is portrayed as a marker of good mothering, I was eager to defy the stereotypes—to prove, through my commitment, to nursing that I was a good mother who would do anything to give my children the right start in life.

Until I could no longer keep up. Even with regular pumping, my milk supply dwindled to nothing. With the baby thriving on formula, our pediatrician gently suggested that I begin the weaning process. “You did a good job—six months is great. You’re a good mom,” she assured me. But I was unconvinced, seeing only a yawning future in which diabetes, obesity, and developmental delays lay like traps to be sprung on my formula-fed baby.² I would not be spared either.

2. See *Benefits of Breastfeeding for the Infant/Young Child*, MOTHER & CHILD NUTRITION, <https://motherchildnutrition.org/healthy-nutrition/about-essential-nutrition-actions/benefits-of-breastfeeding.html> (last visited Feb. 6, 2021); Cesar Victora et al., *Association Between Breastfeeding and Intelligence, Educational Attainment, and Income at 30 Years of Age: A Prospective Birth Cohort Study From Brazil*, 3 *LANCET GLOB. HEALTH* e199, e201–e203 (2015); Colin Binns, MikKyung Lee & Wah Yun Low, *The Long-Term Public Health Benefits of Breastfeeding*, 28

Without the protective insulation of nursing, studies suggested that I would be less likely to drop my pregnancy weight (true!) and more likely to develop various cancers.³

Two weeks into weaning, I found myself with my son at a neighborhood taqueria. My decision to stop breastfeeding had come with an unanticipated benefit—I was no longer confined to my home. I had never grown comfortable with the prospect of nursing in public,⁴

ASIAN PAC. J. PUB. HEALTH 7, 9 (2016) (documenting studies that show that breastfeeding is correlated with increased IQ); OFF. OF THE SURGEON GEN., U.S. DEP'T OF HEALTH & HUMAN SERVS., THE SURGEON GENERAL'S CALL TO ACTION TO SUPPORT BREASTFEEDING 2 (2011) [hereinafter OFF. OF THE SURGEON GEN.] (noting the correlation between breastfeeding and a reduction in the likelihood of obesity).

3. *Benefits of Breastfeeding*, AM. ACAD. OF PEDIATRICS, <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Breastfeeding/Pages/Benefits-of-Breastfeeding.aspx> (last visited Feb. 7, 2021); OFF. OF THE SURGEON GEN., *supra* note 2, at 2 (noting the correlation between breastfeeding and the reduction of risk for certain cancers).

4. I was not alone in this. The increased interest in breastfeeding has been accompanied by considerable debate about the propriety of public breastfeeding. *See, e.g.*, Catriona Fisk, *A Decent Mother? The Breastfeeding and Visibility Debate Is Nothing New*, THE CONVERSATION (Apr. 18, 2016), <http://theconversation.com/a-decent-woman-the-breastfeeding-and-visibility-debate-is-nothing-new-57728> [<https://perma.cc/3SJ9-SSJ6>]; Caroline Bologna, *Breastfeeding Mom Is 'Humiliated' After Being Told to Nurse in Marshalls Bathroom Stall*, HUFFINGTON POST (Sept. 14, 2015, 12:38 PM), http://www.huffingtonpost.com/entry/breastfeeding-mom-is-humiliated-after-being-told-to-nurse-in-marshalls-bathroom-stall_us_55f6cf2ae4b063ecbfa4c92e [<https://perma.cc/P9CK-4JAU>] (discussing a mother who was required to breastfeed in the restroom, rather than a store fitting room); Caroline Bologna, *Gym Apologizes to Mom After Barring Her from Breastfeeding in Women's Locker Room*, HUFFINGTON POST (Sept. 18, 2015, 4:27 PM), http://www.huffingtonpost.com/entry/gym-apologizes-to-mom-after-barring-her-from-breastfeeding-in-womens-locker-room_us_55fc42cce4b00310edf6d41d [<https://perma.cc/6GJU-5453>] (noting that a gym prohibited a mother from breastfeeding in the women's locker room); Dana Hedgpeth, *Woman Says She Was Told to Pump Breast Milk in Pet Area at Dulles Airport*, WASH. POST (Oct. 7, 2015), <https://www.washingtonpost.com/news/local/wp/2015/10/07/woman-says-she-was-told-to-pump-breast-milk-in-pet-area-at-dulles-airport/> (reporting that an airport employee directed a nursing mother to feed her child in a "pet relief area"); Katie Mettler, *Breast-feeding Good Moms Get Kicked Out of the 'Bad Moms' Movie*, WASH. POST (Aug. 3, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/08/03/breast-feeding-moms-got-kicked-out-of-the-bad-moms-movie-so-30-others-walked-out-too/?utm_term=.20063c052112 [<https://perma.cc/H74M-TYMB>] (reporting a theater's decision to expel a nursing mother from a movie

especially since there were few public lactation facilities, and I was likely to run into colleagues and students at various neighborhood haunts. Accordingly, I had stayed close to home in order to feed the baby on-demand and to have the assurance of privacy while doing so. Now, no longer shackled to my breast pump or deterred by the prospect of public nursing, I was freer than I had been in months—or so I thought.

Seated at the taqueria's Formica table, I began unpacking my diaper bag, producing a slender bottle of ready-mixed formula. Seated in the stroller, my son gurgled with delight. I poured the contents of the formula bottle into a plastic baby bottle, screwed on the plastic nipple, and then popped the bottle between my son's eager lips. I then settled back to watch him drain the bottle.

Quickly, I noticed that I was being observed. I looked up to see an older woman casting an appraising eye my way. She was around fifty with a shock of long, curly, graying hair. She wore a Patagonia fleece jacket with a faded t-shirt underneath. I smiled tentatively. She shook her head in distaste. "I can't *believe* you're feeding that beautiful baby formula. You might as well feed him poison!"

I don't know why I was shocked. Berkeley is the sort of place where strangers routinely interrupt other people's conversations to offer advice as to "the best place to buy organic artichokes" or to explain "the nutritional benefits of stone-ground millet." Why would breastfeeding be any different? But I was shocked, shocked by her vehemence—and the unmistakable *judgment* in her voice. I was feeding—no, *poisoning*—my baby. I was a *bad* mother.

I felt *compelled* to explain myself, but I was momentarily speechless, unsure of *how* to explain myself. Suddenly, a flood of words poured from my mouth as tears stung my eyes. I *tried*, I nursed my first child exclusively for a year, I worked with a lactation

screening); Vanessa A. Simmons, *Translated: Mom Shamed for Breastfeeding in Public at a Park*, NORMALIZE BREASTFEEDING (Apr. 16, 2015), <https://normalizebreastfeeding.org/2015/04/mom-shamed-for-breastfeeding-in-public-at-a-park/> [<https://perma.cc/66G5-J54Q>] (reporting two individuals berating a nursing mother for breastfeeding in a public park); Laura Vitto, *Breastfeeding Mother Records Her Experience with Public Harassment*, MASHABLE (June 15, 2016), <http://mashable.com/2016/06/15/public-breastfeeding-video/#CzyC2XKWlaqt> [<https://perma.cc/JFX6-FSC9>] (showing a video of a man harassing a nursing mother for breastfeeding in the café area of a Target store).

consultant, the pediatrician *told* us to supplement, he was losing weight, he was unhealthy, I did the best I could. I did the best I could.

Then I caught myself. Why was I explaining myself to a stranger in a tattered fleece jacket? Why did her judgment matter so much that I was recounting private conversations with my physician and my husband to a stranger? I was suddenly incensed—with myself and with this woman. Remembering myself, I furiously spat back, “Why don’t *you* mind *your* business and stay out of mine? What I feed my child is none of your concern.” As other patrons averted their eyes, I threw the detritus of the feeding back in the diaper bag and swept out of the taqueria, glancing back only to give the woman a withering look. But she was not looking at me. She was staring pityingly at my baby.

* * * *

That encounter with a stranger in a Berkeley taqueria was almost ten years ago and lasted all of two minutes. But I have never forgotten it. Indeed, as I read Andrea Freeman’s *Skimmed: Breastfeeding, Race, and Injustice*, the memory of this episode came flooding back. In *Skimmed*, Freeman excavates the history of the Fultz quadruplets and uses it as a backdrop for a broader discussion of racism, poverty, food insecurity, and law’s role in cultivating the conditions that give rise to food oppression and racial disparities in breastfeeding. It is a thought-provoking and important book—one that advances Freeman’s long-standing scholarly efforts to surface food policy and food oppression as overlooked but critical facets of the racial injustice that minority communities experience.⁵

5. It is worth noting—and crediting—Freeman’s efforts to establish food justice as a field of inquiry within the legal academy. She has been on the vanguard of efforts to chart this important—and underappreciated—area of legal discourse and scholarship. See, e.g., Andrea Freeman, *You Better Work: Unconstitutional Requirements and Food Oppression*, 53 U.C. DAVIS L. REV. 1531 (2020); Andrea Freeman, *Unmothering Black Women: Formula Feeding as an Incident of Slavery*, 69 HASTINGS L.J. 1545 (2018); Andrea Freeman, “*First Food*” *Justice: Racial Disparities in Infant Feeding as Food Oppression*, 83 FORDHAM L. REV. 3053 (2015); Andrea Freeman, *The 2014 Farm Bill: Farm Subsidies and Food Oppression*, 38 SEATTLE U. L. REV. 1271 (2015); Andrea Freeman, *Transparency for Food Consumers: Nutrition Labeling and Food Oppression*, 41 AM. J.L. & MED. 315 (2015); Andrea Freeman, *The Unbearable Whiteness of Milk: Food Oppression*

Critically, *Skimmed* goes beyond Freeman's extant body of work to link corporatism, food policy, and racism to current racial disparities in breastfeeding. As she explains, of all racial groups, Black women have the lowest breastfeeding rates.⁶ Meaningfully, these low rates of breastfeeding contribute to health and nutritional disparities among Black children (p. 4). Less obviously, these disparities fuel continued skepticism and criticism of Black mothering (p. 4). Put differently, because breastfeeding is associated with "good" mothering, Black women's failure to participate in this maternal rite of passage fuels the stereotype that they are bad or deviant mothers—that they are selfish, uncaring, and unwilling to sacrifice their own comfort for their children's long-term health (p. 4).

At the outset, Freeman unpacks the historical and contemporary impediments to Black breastfeeding. Within the Black community, she explains, breastfeeding has strong associations with slavery, where Black women often were prevented from nursing their own children because of other labor demands or were conscripted into "wet-nursing" other women's children (pp. 37–39). Modernly, for many Black mothers, breastfeeding is simply incompatible with paid work, especially in industries where maternity leave is scarce (and often unpaid) and accommodations for lactation are uneven, at best (pp. 118, 130–32).

Freeman's unique contribution to the discussion is in showing that these long-standing explanations for the racial disparity in breastfeeding are largely incomplete. The focus on slavery, contemporary work patterns, and, indirectly, Black women's preferences, she explains, occludes the role of law, public policy, and corporate policy in cultivating the background conditions that steer Black women away from breastfeeding and toward formula use. Federal food policies, including nutrition subsidies for low-income families, have made formula use more attractive—and affordable (p. 118–20). Moreover, formula manufacturers have embedded

and the USDA, 3 U.C. IRVINE L. REV. 1251 (2013); Andrea Freeman, *Fast Food: Oppression Through Poor Nutrition*, 95 CALIF. L. REV. 2221 (2007).

6. According to Freeman, "[a]pproximately 83 percent of White mothers and 82.4 percent of Latinx mothers report ever attempting to breastfeed, while 66.4 percent of Black mothers report ever trying." (p. 10). Class inequalities exacerbate this already stark disparity—"Only 37 percent of low-income Black women initiate breastfeeding." (pp. 10–11).

themselves in hospitals and maternity wards, distributing formula to new mothers in an effort to enlist a steady stream of new customers (pp. 49, 126).

And all of this, Freeman argues, is racially contingent. Not only do formula companies specifically target Black consumers, most hospitals and maternity wards are ill-equipped to offer robust lactation support to all new mothers. It is far easier to supply a new mother with formula than to equip her with the training and equipment necessary to breastfeed successfully—and it is even easier to do so if the new mother has already been primed to be receptive to formula because of targeted marketing efforts (p. 55). With this in mind, formula companies complement their marketing efforts by routinely providing formula at low cost or no cost to hospitals in an effort to encourage early formula adoption (p. 49). And, perhaps more troublingly, hospital staff “often rely on stereotypes and assume that Black women will choose not to breastfeed,” further entrenching racial disparities in formula use and breastfeeding (p. 55).

To underscore how public policy, corporatism, and race have coalesced to shape consumer preferences for formula, Freeman uses the tragic story of the Fultz quadruplets as a point of entry. Like most readers, I was unfamiliar with the Fultz quadruplets' story and their complicated relationship with the Pet Milk Company, then one of the nation's leading formula companies. In Freeman's confident hands, the story takes on new meaning. Born in 1946 in the segregated South, the Fultz quadruplets were the world's first recorded identical quadruplets (p. 1). Sensing a major marketing opportunity, Fred Klenner, the white physician who delivered the girls, immediately brokered a deal that would cast the quadruplets as spokesmodels for an evaporated milk manufacturer (pp. 18–20). The girls' parents, a Black tenant farmer and housewife, were not consulted at all (pp. 18–20). In the end, Klenner, who had also renamed the quadruplets after his own family members (p. 19), executed a deal giving the Pet Milk Company exclusive rights to market the girls (p. 20). In exchange for the rights to use the girls' image in its advertising, Pet Milk agreed to provide the Fultzes with a parcel of land and modest income, as well as medical care, childcare support, college education for the girls, and of course, Pet Milk products (p. 20).

In time, it became clear that the Fultz family had gotten the short end of the deal (p. 21). The land proved barren, and the income that

Pet Milk provided to the family was barely enough to pay the nurses required to care for the girls (pp. 21–23). The couple’s other children reaped none of the benefits of their sisters’ fame, and the family continued to struggle financially (p. 24).

Nor was it clear that the affiliation with Pet Milk—and Klenner—was advantageous to the girls themselves. Just after the girls’ sixth birthday, Dr. Klenner, who profited handsomely from the arrangement (p. 20), “appeared in front of a judge” with a Pet Milk representative to petition the court for a change in the quadruplets’ guardianship (p. 31). The court agreed, removing the quadruplets from their parents’ care to that of guardians that Klenner had selected (p. 31). The girls spent the rest of their childhood and adolescence in the care of these guardians in a home that Pet Milk purchased (pp. 31–33).

Separated from their parents and siblings and raised by court-appointed guardians, the girls spent their childhoods being wheeled out routinely for Pet Milk events and photoshoots (pp. 75–77). As a consequence of their work schedules and the realities of Black life in the 1950s, they were often itinerant students at under-resourced segregated schools (pp. 75–77). They graduated high school a year behind their classmates with subpar academic records that made it impossible for them to take advantage of the Bennett College scholarships that were promised in their Pet Milk contract (p. 164). As adults, they flitted between an array of odd jobs while unsuccessfully pursuing fame as a musical group (pp. 166–68). By age forty-five, the sisters had four marriages, three children, and four breast cancer diagnoses between them (pp. 167–71). In many ways, it was an ignominious end for the four babies who had captured the imagination of the country and an industry.

But if the deal had not worked to the advantage of the Fultz quadruplets and their family, it had been a boon to Pet Milk. With the Fultz quadruplets as the public face of Pet Milk products, the company inaugurated a wildly successful marketing campaign that specifically targeted formula to Black households (p. 33). Indeed, as Freeman contends, the racial disparities in breastfeeding are, at least in part, attributable to the success of Pet Milk’s racially-targeted marketing campaign, which other formula companies eagerly emulated (pp. 72–73). Throughout the 1960s and 1970s, as breastfeeding gained popularity with white mothers, breastfeeding rates among Black

mothers remained flat—a testament to formula companies' successful penetration into Black culture and the Black community.

Tellingly, formula companies have continued to market their products in racially specific ways, relying on “marketing techniques that reach disproportionately more Black mothers than White ones” (p. 55). And, as Freeman explains, these corporate policies dovetail with government policies in that formula companies often sell and distribute formula to those participating in means-tested state-sponsored nutrition programs (pp. 120–23). Critically, many of the beneficiaries of these state-sponsored nutrition programs are low-income Blacks (p.115). On this account, corporate marketing endeavors, state-sponsored food policies, and racially-inflected patient care practices all coalesce to cultivate a “complex web” of seemingly unrelated, but ultimately intersecting, laws, policies, and practices that work in tandem to impede Black women's ability to breastfeed (p. 114).

The contributions to this symposium all take on different aspects of the “complex web” that Freeman has identified, reflecting the breadth and depth of *Skimmed* and Freeman's broader project. Not surprisingly, Freeman locates *Skimmed* within a burgeoning academic and public policy dialogue about food justice (pp. 8–9). The food justice movement is a grassroots movement that calls attention to how the food industry both reflects and reinscribes various systems of oppression in the production, distribution, and consumption of food.⁷ Professor Freeman's particular contributions to the development of food justice as an academic field have been in her discussion of “food oppression.”⁸ As she has explained in prior work, the concept of food oppression goes hand in hand with food justice, calling attention to the ways in which food insecurity, federal nutrition programs, agricultural subsidies, and food labeling all contribute to the oppression of already subordinated communities.⁹ In this regard, food oppression

7. For a discussion of the origins and aims of the food justice movement, see ROBERT GOTTLIEB & ANUPAMA JOSHI, *FOOD JUSTICE* (2010).

8. See, e.g., *supra* note 5 (collecting articles).

9. See, e.g., Freeman, *The 2014 Farm Bill*, *supra* note 5 (discussing the impact of federal agricultural policy on the poor and minorities); Freeman, *Transparency for Food Consumers*, *supra* note 5 (discussing how food labeling policies contribute to food oppression); Freeman, *The Unbearable Whiteness of Milk*, *supra* note 5 (discussing the ways in which federal agricultural subsidies to the dairy industry

exacerbates the impact of other forms of oppression, including racial oppression—a point that Ernesto Hernández-López underscores in his symposium essay.¹⁰ His essay considers food injustice in the context of the COVID-19 pandemic and the plight of the minorities who are over-represented in agricultural labor and the food processing industry.¹¹

Despite its pronounced impact, particularly among communities of color, it can be difficult to identify and address food oppression.¹² This difficulty stems, in large part, from the fact that food oppression is the product of the cooperation between market forces and government policy.¹³ Additionally, because food consumption is regarded as a “matter of private choice and free will,” individuals are often blamed for the health problems that flow from poor nutrition.¹⁴ This neoliberal focus on personal responsibility “dominates medical, scientific, and social views of health” and occludes the systemic and institutional frameworks that scaffold food oppression.¹⁵

But as Anthony Kwame Harrison suggests in his contribution to this symposium,¹⁶ the roots of the first food oppression that Freeman identifies in *Skimmed* precede the rise of racialized corporate marketing campaigns. As he explains, the racialized roots of formula marketing, which helped to “cultivate a generation of Black consumers’ addictions to sugary, over-processed unhealthy foods,” are evident in the broader history of the commodification of sugar,

underwrite food oppression among minority communities); Andrea Freeman, *Fast Food*, *supra* note 5 (discussing the impact of food deserts and food insecurity on food oppression among minorities).

10. Ernesto Hernández-López, *Food Oppression: Lessons from Skimmed for a Pandemic*, 57 CAL. W. L. REV. 243 (2021).

11. *Id.* at 249–250 (discussing the ways in which the COVID-19 pandemic raises structural concerns regarding food injustice and oppression related to food production).

12. See Freeman, *Fast Food*, *supra* note 5, at 2245 (“Food oppression is difficult both to identify as a social wrong and to redress, because it stems from a combination of market forces and government policy.”).

13. *Id.* at 2246.

14. *Id.*

15. *Id.*

16. Anthony Kwame Harrison, *Using Black Lives As If They Don’t Matter: The Famous Four and Other Serious Stories of Capitalism and White Supremacy*, 57 CAL. W. L. REV. 291 (2021).

slavery, and the rise of global capitalism.¹⁷ In this regard, the racialized landscape of breastfeeding is not simply a contemporary food justice issue; rather, it is a living remnant of imperialism and global capitalism and their inextricable ties to the transatlantic slave trade.¹⁸ Put differently, the seeds of the problem that *Skimmed* addresses were sown centuries before the Fultz quads made their entrance into Jim Crow America. Indeed, this story—like so many others in America—was forged in the crucible of the Middle Passage.

But if Freeman, Hernández-López, and Harrison read the story of the Fultz quads through the lenses of historic injustice and oppression and the production of food, the other symposium contributors make clear that the issues that *Skimmed* surfaces defy easy characterization. Like Freeman, Tonya Brito and Sofia Jonas view the racial disparity in breastfeeding as a crisis with important implications for public health.¹⁹ Indeed, they respond to Freeman's call to action by proposing the creation of mutual aid societies to support breastfeeding in the Black community.²⁰ As they explain, "Black communities have weathered systematic assaults on economic, social, physical and spiritual well-being by forming voluntary associations of mutual interdependence and collective fundraising to meet a range of emotional and material needs."²¹ Brito and Jonas's proposal is innovative, but it, perhaps perversely, places the onus on embattled communities to engage in self-help, rather than challenging the state and other actors to change the conditions that give rise to the disparities in the first place.

By contrast, Ruqaiyah Yearby explicitly considers the state's role in remedying lactation disparities,²² documenting the thin layer of public support for lactation and breastfeeding that exists in the

17. *Id.* at 296.

18. *Id.* at 296–97.

19. Tonya L. Brito & Sofia Jonas, *Breastfeeding, Race and Mutual Aid*, 57 CAL. W. L. REV. 257, 260 (2021) ("Lower rates of breastfeeding among Black women present a public health crisis . . .").

20. *Id.* at 262–272 (discussing the history of mutual aid societies in the Black community).

21. *Id.* at 264.

22. Ruqaiyah Yearby, *Employment Discrimination, Breastfeeding, and Health Justice*, 57 CAL. W. L. REV. 279 (2021).

workplace.²³ Employers' failure to better accommodate lactation, she maintains, presents concerns that sound both in the register of employment discrimination *and* health justice.²⁴ In either case, through the enactment of workplace regulations and the expansion of public healthcare benefits, the state is perhaps best positioned to effect meaningful change.²⁵

R.A. Lenhardt and Kimani Paul-Emile consider *Skimmed* through the lenses of their own scholarly expertise—family law and health law, specifically.²⁶ As they explain, it is nearly impossible to disaggregate the Fultzes' exploitative relationship with their physician, Dr. Klenner, from “this country’s long and tortured history of medicine’s mistreatment of Black people”—a history “that continues to shape [Black people’s] relationship to the medical profession today.”²⁷ Similarly, Freeman’s account of the Fultz family’s dire circumstances makes clear “the broad range of systems and structures that impair family functioning”²⁸—particularly for Black families. When Pet Milk intervened with its promise of support in exchange for access to the quadruplets, the Fultzes imagined a way out of three generations of crushing poverty toward a better life for all of their children (p. 21). But their hopes proved fleeting. Their poverty was so deep, and the Pet Milk contract so miserly in its provision, that the Fultzes “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.”²⁹

To be sure, the twin specters of race and class undergird much of the narrative that Freeman skillfully weaves in *Skimmed*—from the Fultzes’ poverty to the segregated schools their children were forced

23. *Id.* at 282–87.

24. *Id.* at 287–88 (arguing that these issues should be viewed as emanating from the failures of both employment discrimination structures and healthcare structures).

25. *Id.* at 288–89 (considering solutions to racial disparities in breastfeeding).

26. R.A. Lenhardt & Kimani Paul-Emile, *Skimmed Milk: Reflections on Race, Health, and What Families Tell Us About Structural Racism*, 57 CAL. W. L. REV. 231 (2021).

27. *Id.* at 232–33.

28. *Id.* at 237.

29. *Id.* at 239.

to attend to the sharp disparities in breastfeeding to which the book calls attention. But, as Jasmine Gonzales Rose makes clear, to speak of race and breastfeeding in generalities is to miss the nuance and texture of these issues.³⁰ As she explains, although Latinas experience many of the same pressures to use formula, they actually breastfeed at higher rates than Black women—a difference that Gonzales Rose attributes to both the importance of Catholicism in Latinx families and the legacy of slavery in Black families.³¹ Catholic hagiography often depicts breastfeeding in positive terms,³² which, according to Gonzales Rose, translates into higher rates of breastfeeding adoption among Latinas, a group that is overwhelmingly Catholic.³³ Likewise, the residue of slavery is so thick and embedded in contemporary Black culture that its impact is palpable in multiple arenas, including breastfeeding.³⁴ In this regard, Freeman's efforts to remedy racial disparities in breastfeeding are not simply *anti-racist*—they are meant to disrupt and dismantle the facets of *anti-Blackness* that continue to shape our society.

Like so many of the contributors to this symposium, Bennett Capers connects *Skimmed* to the deep-seated legacy of slavery in American society.³⁵ Taken together, the Pet Milk marketing campaign, the La Leche League's efforts to increase breastfeeding among a contingent of (mostly white) women, and the ubiquitous state surveillance and criminalization of Black mothers are all part and

30. Jasmine B. Gonzales Rose, *Desnatada: Latina Illumination on Breastfeeding, Race, and Injustice*, 57 CAL. W. L. REV. 303 (2021).

31. *Id.* at 311 (noting that despite formula companies' efforts to market directly to Latina mothers, "Latina mothers are still much more likely to breastfeed than Black mothers").

32. *Id.* at 313–15 (discussing Catholic depictions of Mary as a nursing mother, as well as depictions of Saint Bernard of Clairvaux, who "is known for having a visitation by or vision of Mary holding Baby Jesus during prayer at the Speyer Cathedral where she bared her breast and squeezed a stream of milk into him causing healing and wisdom").

33. *Id.* at 313.

34. *Id.* at 312.

35. Bennett Capers, "And They Took My Milk!", 57 CAL. W. L. REV. 319 (2021).

parcel of slavery's residue.³⁶ But even as we acknowledge these links to the past, Capers insists that other questions must be raised if we are to move forward in the present and the future.³⁷ He is surely correct.

Indeed, Capers focuses on a nagging question that *Skimmed* elides: Is the interest in breastfeeding—and Freeman's hopeful prescription to expand access to lactation support to the Black community—simply another iteration of the “tyranny of reproduction”?³⁸ Put differently, is the valorization of breastfeeding merely another metaphorical cage in which to confine women—and in this case, Black women? If this is the case, *should* we be redoubling efforts to encourage breastfeeding among Black women? Or “[i]s it possible that Black mothers are already ahead of the game? Have they figured out success turns on freedom, freedom from being tethered?”³⁹

Capers' intuitions mirror my own—and, indeed, my own experiences, including that episode in the Berkeley taqueria. Freeman rightly notes the degree to which racial disparities in breastfeeding are part of a web of racial oppression created by a coalition of market forces and government food policies. And her goals of counteracting these forces and expanding opportunities for breastfeeding among Black women are certainly laudable. But one cannot help but wonder whether the effort to expand breastfeeding among Black women will merely trade one injustice for another? As we try to remedy the food injustice that disparate rates of breastfeeding present, are we inadvertently fueling reproductive injustices? Specifically, will the desire to cultivate a culture of breastfeeding among Black women also underwrite a culture of coercion and surveillance for these same women?

In other writing, I have argued that the regulation of intimate life, including reproduction and maternity, can occur under multiple

36. *Id.* at 323 (“This is all part of a larger scheme of denying Black women agency, a traceable denial, as is almost everything, to slavery, and the control, rape, and auctioning of black women.”).

37. *Id.* at 325 (“There are certainly other avenues to explore and questions to answer. I offer a handful below.”).

38. SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX* 225 (1970).

39. Capers, *supra* note 35, at 327.

rubrics.⁴⁰ As Freeman acknowledges in the context of food justice, government policies and market forces work in tandem to regulate and distribute food supplies (pp. 4–5, 8). A similar web of public and private forces operates in tandem to regulate reproduction and maternity. State and federal policies explicitly recognize the legal status of parents, and in so doing, shape and regulate the relationship between parents, their children, and the state itself.⁴¹ More perniciously, the brutal impact of the child welfare system regulates parents in precarious economic and social circumstances⁴²—and, as importantly, indirectly shapes and regulates parenting norms and conduct, even for those who have avoided becoming ensnared in its vicious tentacles.⁴³

But these are not the only forces that regulate parenthood—and specifically, motherhood. Indeed, the regulation of motherhood may occur through extralegal modalities that we do not even recognize as *regulatory*. As I have argued elsewhere, in addition to the traditional legal structures that organize modern parenthood, a less formal but no less potent form of regulation may be meted out by other mothers.⁴⁴ I have termed this kind of informal regulation “the Panopti-mom”⁴⁵—“an echo chamber in which mothers are constantly subject to the gaze and judgment of other mothers.”⁴⁶ The “Panopti-mom” flourishes on

40. See, e.g., Melissa Murray, *Rights and Regulation: The Evolution of Sexual Regulation*, 116 COLUM. L. REV. 573 (2016) (considering various modalities for the regulation of intimate life).

41. See, e.g., Douglas NeJaime, *The Nature of Parenthood*, 126 YALE L.J. 2260 (2017) (considering the ways in which the American regime of parental recognition law reflects particular norms and priorities, while also shaping the relationship between parents, between parents and children, and between the family and the state).

42. See generally DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002) (discussing the influence of race permeating America's child welfare system).

43. See, e.g., Melissa Murray, *Panopti-moms*, 4 CALIF. L. REV. CIRCUIT 165, 175–76 (2013).

44. See, e.g., *id.* at 175–78 (2013) (discussing the informal measures that may be used to police and regulate maternal conduct); Melissa Murray, *Marriage as Punishment*, 112 COLUM. L. REV. 1 (2012) (arguing that marriage and crime have been the two dominant legal modalities for the regulation of sex and sexuality).

45. Murray, *supra* note 43, at 176.

46. *Id.*

popular websites like UrbanBaby and Babble, where mothers chastise and shame other mothers for failing to observe the collective norms (real or imagined) of maternal care.⁴⁷ But even when there is no direct rebuke, the force of the Panopti-mom persists to shape behavior. Feeling the omnipresent scrutiny of others, we reflexively police and monitor our own conduct and pass judgment on the conduct of others.⁴⁸ As in Jeremy Bentham's Panopticon,⁴⁹ "we are watched, but we are also watchers."⁵⁰

Reading *Skimmed*, I was reminded of the Panopti-mom, and indeed, of my own experience in its breastfeeding echo chamber where a white woman publicly shamed me for failing to breastfeed my child. What had licensed her to speak so freely? To insert herself into the private decisions of another woman and her family? Again, part of it was Berkeley, where "good-natured advice" is always forthcoming. But, upon reflection, I cannot help but think that some of it harkens back to the assumptions from which *Skimmed* and its prescription proceed. In a culture in which "breast is best"—and indeed, is so self-evidently correct that alternatives are never even broached or contemplated—it is easy (or at least easier) to condemn those who depart from the orthodoxy as deviant. It is likely even easier to do so when these individuals are Black women—the long-standing standard bearers of deviant motherhood.⁵¹

47. *Id.*

48. *Id.*

49. Jeremy Bentham, *Panopticon*, in THE PANOPTICON WRITINGS 29, 45 (Miran Božovič ed., 1995) (1787).

50. Murray, *Panopti-moms*, *supra* note 43, at 176.

51. The devaluation of Black motherhood is evident throughout our legal culture, from the child welfare system's removal of Black children from their mothers to the prosecution of Black mothers for drug use to popular images that depict Black mothers as indifferent, unstable, and abusive. *See, e.g.*, DOROTHY ROBERTS, KILLING THE BLACK BODY 304–08 (2d ed. 2017) (discussing the "long history of denigration of Black mothers dating back to slavery"); Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1436–44 (1991) (discussing the devaluation of Black motherhood across multiple sites); Dorothy E. Roberts, *The Value of Black Mothers' Work*, 26 CONN. L. REV. 871, 873–75 (1994) (discussing, in the context of welfare reform, the devaluation of Black motherhood); Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1, 10–11 (1993) (arguing that patriarchy requires and rewards white motherhood while denying the same value to Black motherhood); Regina Austin,

Therein lies the paradox of *Skimmed*. Freeman's entire project is animated by an admirable desire to unshackle Black women from the tropes of deviant motherhood that have so long defined their maternity (pp. 87–93). With greater public and private support for breastfeeding, Black women will have the opportunity to participate in this rite of motherhood—a prospect that redounds to the benefit of their children's health and their own dignity as mothers. Though Freeman is careful to note that Black mothers should be free to decide for themselves whether they wish to breastfeed, the book perhaps overlooks the regulatory forces that may impede the prospect of Black women's autonomy in this realm. If there are fewer impediments to breastfeeding, does it merely heighten the expectation of compliance? And if the dismantling of barriers to breastfeeding is accompanied by the expectation that most women *will* breastfeed, have we also increased the likelihood—and opportunities for—greater surveillance and censure of noncompliant mothers? More pointedly, is cultivating a culture of breastfeeding among Black mothers another kind of maternal colonization? In expanding access to breastfeeding, are we simply encouraging (coercing?) Black women to adopt majoritarian maternal norms, rather than interrogating—and exploring—those norms altogether?

This is all to say that the issues that *Skimmed* raises are not solely about food justice and the freighted history from which food injustice proceeds. These are questions of reproductive justice, as well—a point that Freeman readily acknowledges (pp. 173–74). As we consider whether and how to address the issue of racial disparities in breastfeeding, it is worth recognizing that these issues are multifaceted and complex. As Freeman notes, these are questions of food justice and food oppression that implicate the health and well-being of millions of Black children. But as I maintain here, these are also reproductive justice issues that implicate the autonomy interests of Black women, a group that all too often has been singled out for greater surveillance and censure in their mothering. In this regard, it may be too facile to double down on “breast is best” and focus on providing more women with greater access to lactation support. At some point, we must understand that the very same tropes that have

Sapphire Bound!, 1989 WIS. L. REV. 539, 549–58 (discussing negative stereotypes of unmarried Black mothers in popular culture and judicial opinions).

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limited breastfeeding in the Black community may also be deployed, in tandem with greater access to lactation support, to coerce, surveil, and police Black women and Black motherhood.