

# Structural Racism in Law and Medicine: The Root Cause of Health Inequities

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# Roadmap

- ❖ Intersectionality & Societal Systems
- ❖ Structural Racism
- ❖ Structural Racism in Medicine
- ❖ Structural Racism in Law
- ❖ Health Justice

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# Intersectionality



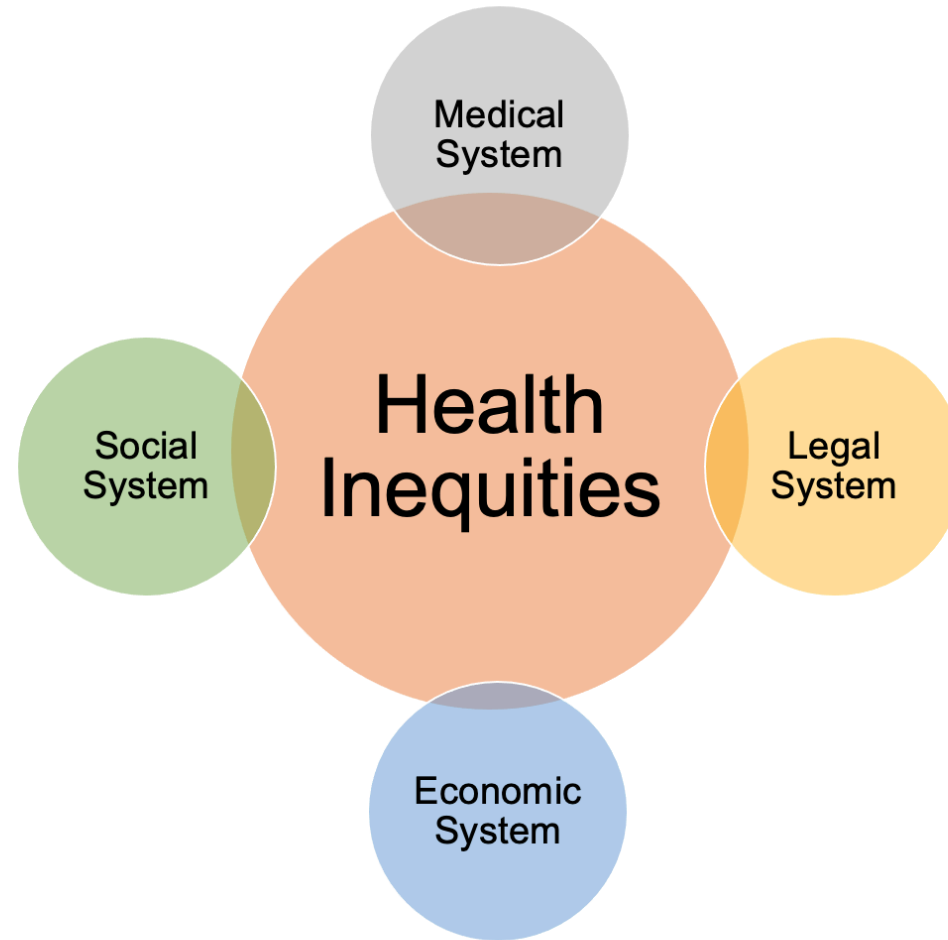
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Source Misty McPhetridge, BSSW,  
<https://researchguides.library.syr.edu/fys101/intersectionality>

# Societal Systems

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## Systems of Oppression and Health Inequities in the United States©



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# Structural Racism

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❖ The ways that **practices, policies, and laws** are used to structure systems (including the medical system) to advantage White individuals and disadvantage racial and ethnic minority individuals

❖ It also includes the ways that organizations work together to create separate and independent barriers through the “**neutral denial**” of equal treatment “that results from the normal operations of the institutions in a society”

❖ **It does not require bad intent**



# Structural Racism in Medicine

- ❖ **Medical Research**
- ❖ **Race as a Genetic Factor**
- ❖ **Medical Education**

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Illustration of Dr. J. Marion Sims with Anarcha by Robert Thom. Anarcha was subjected to 30 experimental surgeries.

Pearson Museum, Southern Illinois University School of Medicine

# Remembering Anarcha, Lucy, and Betsey: The Mothers of Modern Gynecology



Mothers of Gynecology, a statue honoring enslaved Black women who were unwilling subjects in experiments that resulted in medical advances, was created by Michelle Browder in Montgomery, Ala.

Cristela Guerra



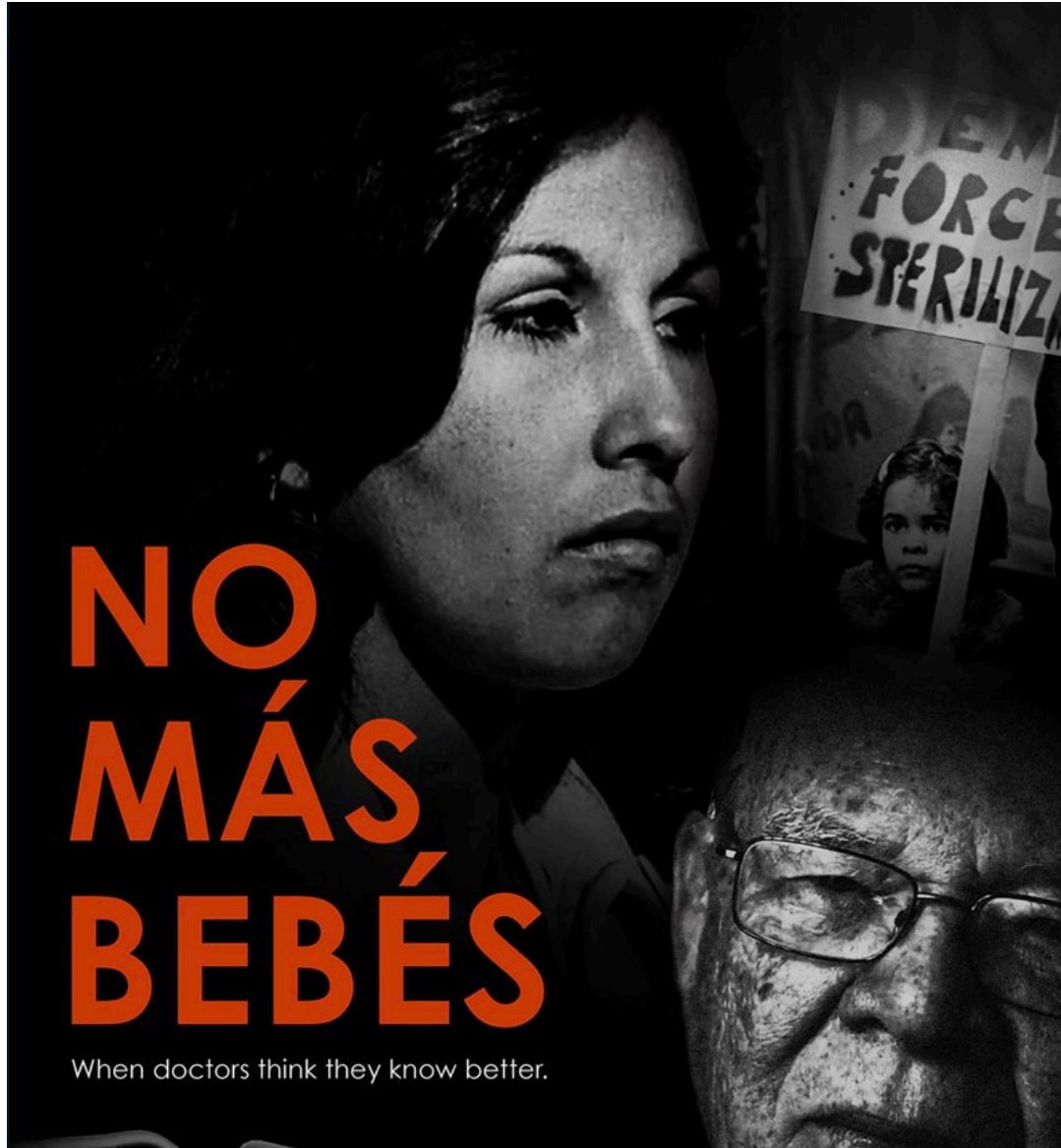


## The Puerto Rico Pill Trials



*White MFPC officials and medical professionals used Depo-Provera, a birth-control medication, to forcibly sterilize Black women and girls in the South. Courtesy National Museum of American History*





# NO MÁS BEBÉS

When doctors think they know better.



# Crack Babies: The Worst Threat Is Mom Herself

By Douglas J. Besharov

**L**AST WEEK in this city, Greater Southeast Community Hospital released a 7-week-old baby to her homeless, drug-addicted mother even though the child was at severe risk of pulmonary arrest. The hospital's explanation: "Because [the mother] demanded that the baby be released."

The hospital provided the mother with an apnea monitor to warn her if the baby stopped breathing while asleep, and trained her in CPR. But on the very first night, the mother went out drinking and left the child at a friend's house—without the monitor. Within several hours, the baby was dead. Like Dooney Waters, the 6

## Children of the Opioid Epidemic

In the midst of a national opioid crisis, mothers addicted to drugs struggle to get off them — for their babies' sake, and their own.

By JENNIFER EGAN MAY 9, 2018





# Defining Race

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- ❖ **Ancestry**
- ❖ **Medical Record**
- ❖ **One drop rule**
- ❖ **Other's Perception**





# What is his or her race?

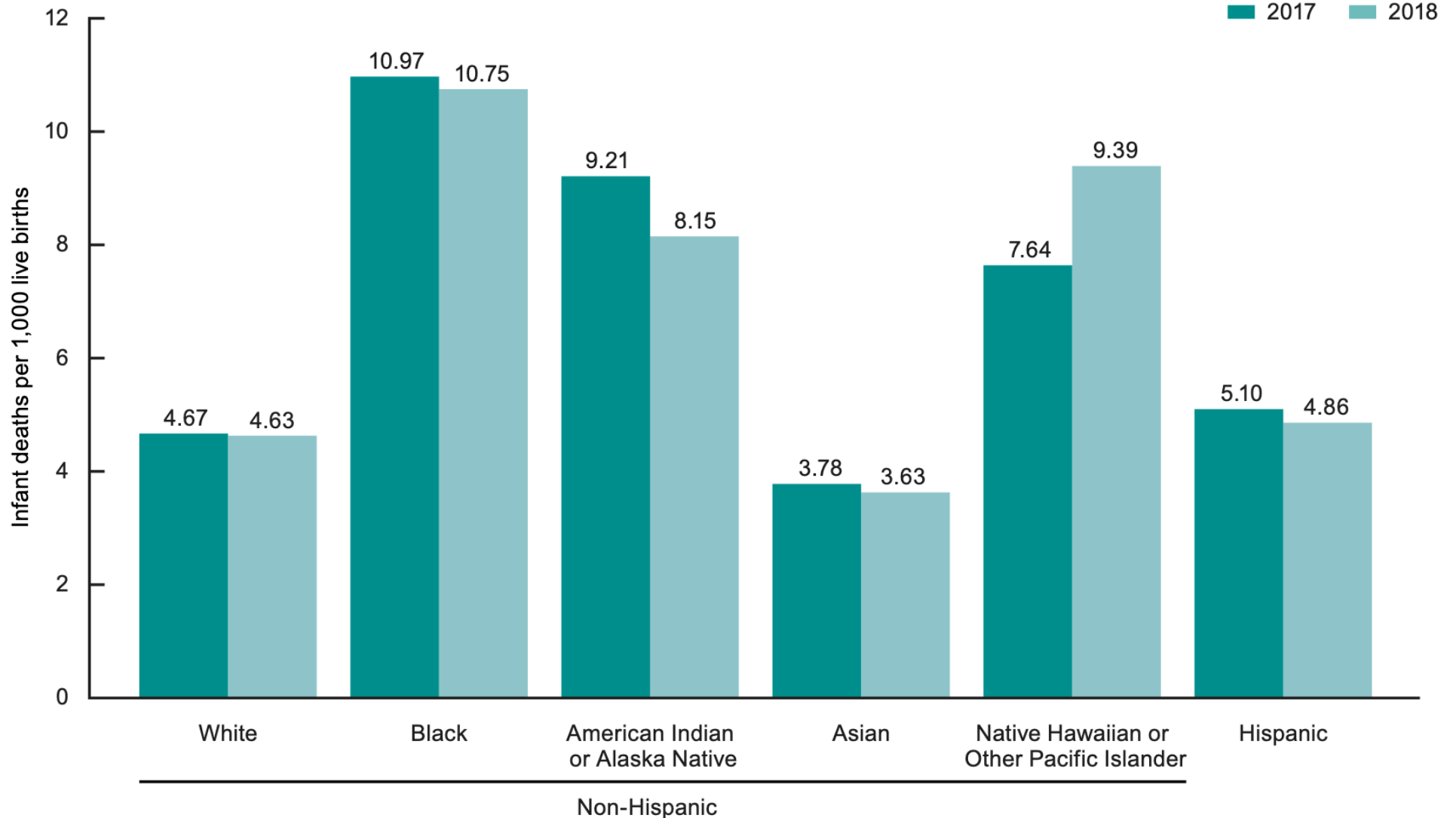
# Race as a Genetic Factor

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- ❖ Erroneous assumptions:
  - ✓ Whites are superior and the standard
  - ✓ Minorities are inferior
  
- ❖ Areas in Medicine
  - ✓ Health Disparities Research
  - ✓ Medical Guidelines
  - ✓ Standards of Care

# Race as a Genetic Factor (cont.)

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SOURCE: NCHS, National Vital Statistics System, Linked birth/infant death file.

**Figure 2. Infant mortality rates, by race and Hispanic origin: United States, 2017–2018**



January 4, 1947

## **SICKLE CELL ANEMIA, A RACE SPECIFIC DISEASE**

*JAMA.* 1947;133(1):33-34. doi:10.1001/jama.1947.02880010035011

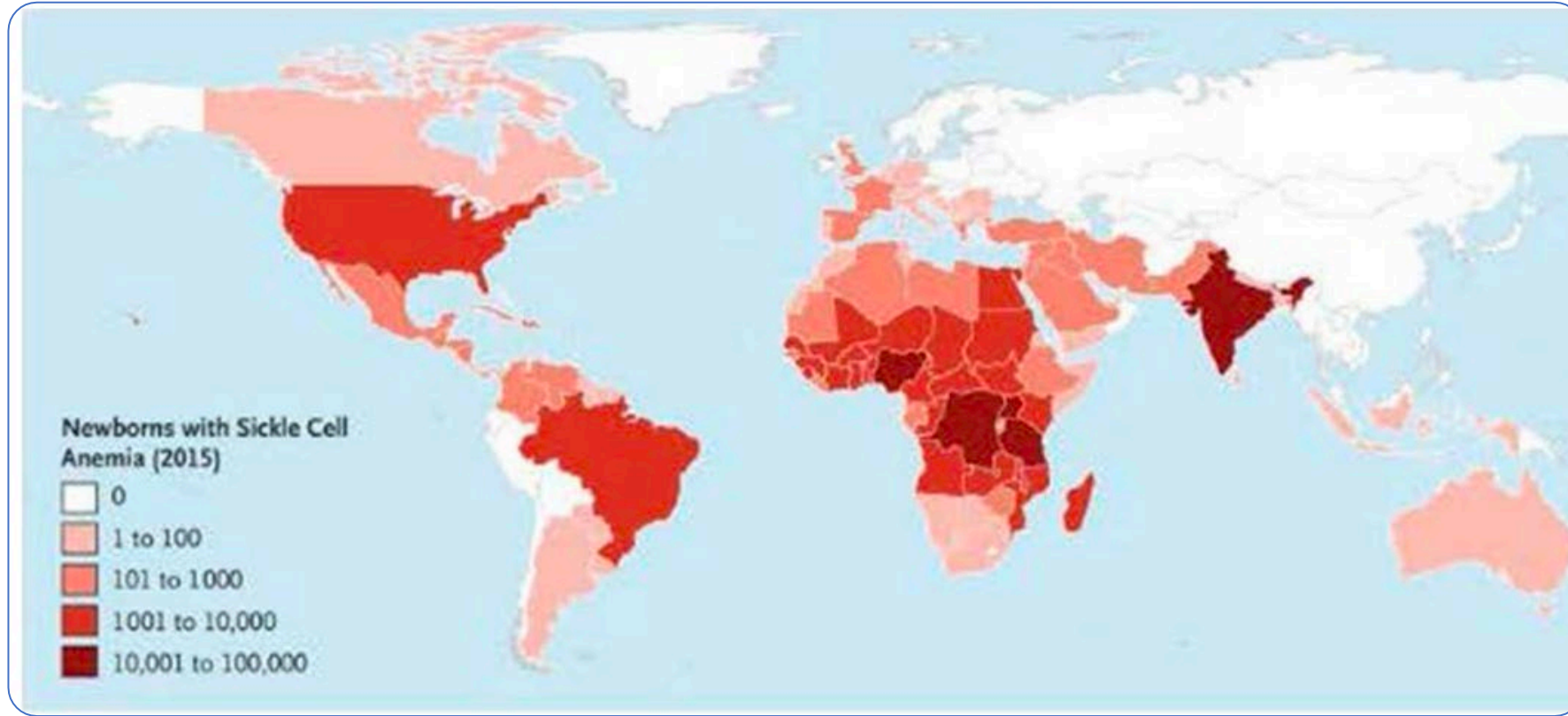
## Racial/Ethnic Variation in Nasal Gene Expression of Transmembrane Serine Protease 2 (TMPRSS2)

## Racial Differences in Blood Lipids Lead to Underestimation of Cardiovascular Risk in Black Women in a Nested Observational Study

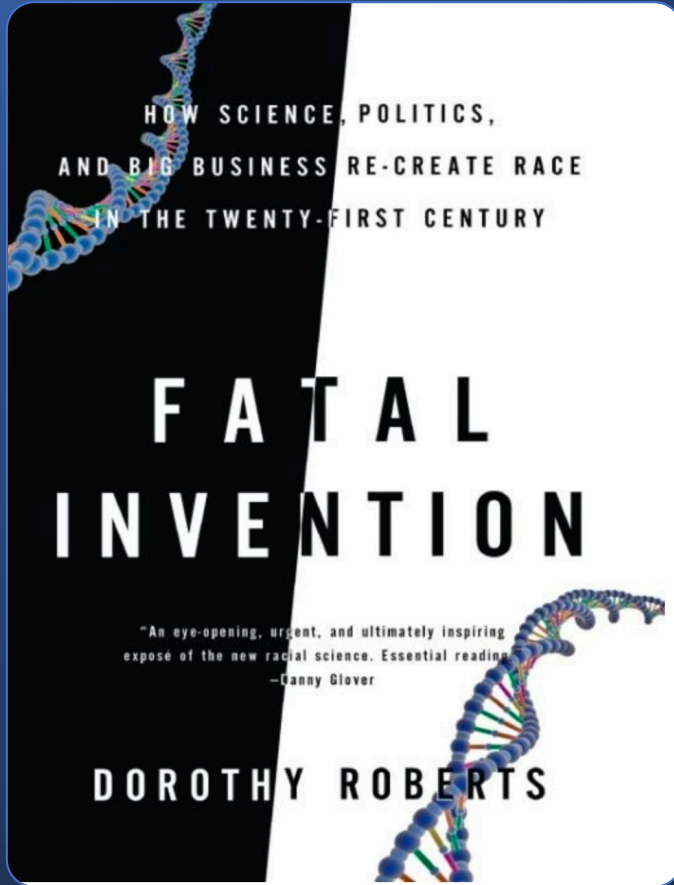
## Obesity in African- Americans: The Role of Physiology

## Contribution of Germline Predisposition Gene Mutations to Breast Cancer Risk in African American Women

**FIGURE 1** | Number of newborns with Sickle Cell Anemia in Each Country in 2015. Data are based on estimates from Piel et al. Alaska is shown separately from the rest of the United States. Used with permission from Piel FB, Steinberg MH, Rees DC. Sickle cell disease. N Engl J Med (2017) 376:1561-1573.



## Race as a Genetic Factor (cont.)



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- ❖ In the 1930s, medical research used biological race to explain disparities between Black and White women's breast cancer rates (Cohn, 1938).
- ❖ By 1992, research showed that after controlling for socioeconomic status (SES) the disparities between Black and White women were all but eliminated (Gordon, Crow, Brumberg, and Berger, 1992).
- ❖ Breast cancer mortality rates for Black and White women in Chicago were the same between 1980 and 2005 (Roberts 2011)



# Medical Education

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The Institute for Healing Justice & Equity

The New York Times

## Health

### I Am a Racially Profiling Doctor

By Sally Satel  
Published: May 05, 2002

In practicing medicine, I am not colorblind. I always take note of my patient's race. So do many of my colleagues. We do it because certain diseases and treatment responses cluster by ethnicity. Recognizing these patterns can help us diagnose disease more efficiently and prescribe medications more effectively. When it comes to practicing medicine, stereotyping often works.

### Perspective: **Are We Teaching Racial Profiling? The Dangers of Subjective Determinations of Race and Ethnicity in Case Presentations**

Kimberly D. Acquaviva, PhD, MSW, and Matthew Mintz, MD

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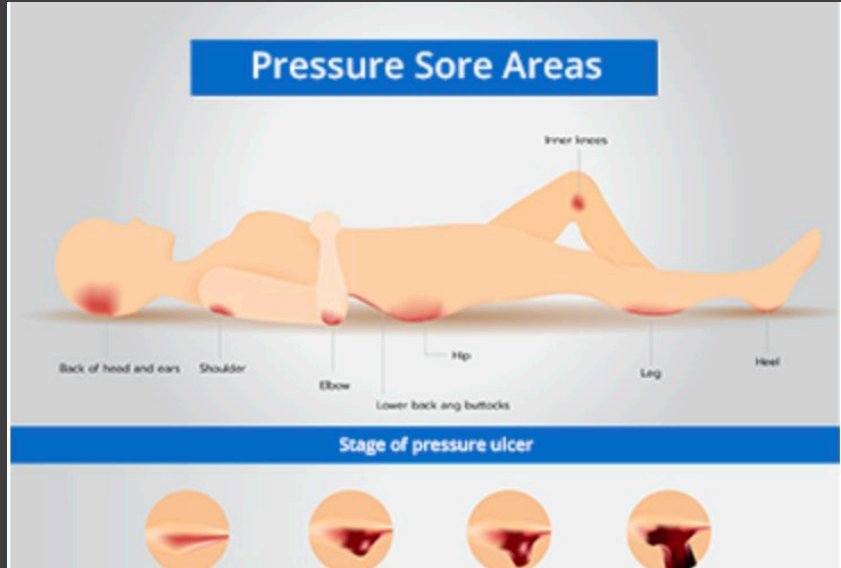
#### Abstract

Physicians make subjective visual assessments concerning the race and/or ethnicity of their patients and document these assessments in patient histories every day. Medical students learn this practice through textbooks and the example set by their educators. Although physicians may believe that they are helping their patients, the practice of using visual clues

concerning race and/or ethnicity to determine whether a patient is at risk of certain diseases lacks scientific rigor and may put the patient at significant risk of receiving substandard medical care. The authors argue that if the patient's race or ethnicity is of critical importance, the data should be collected through more objective, scientifically rigorous means,

such as genetic testing. In this article, the authors call for the widespread transformation of the way medical schools teach tomorrow's physicians about the role of race and ethnicity in taking medical histories, and they challenge physicians to change their current practices.

Acad Med. 2010; 85:702–705.



Researchers are debating whether 'COVID toes' are triggered by an infection with the coronavirus SARS-CoV-2. Credit: Cordelia Molloy/Science Photo Library

## FDA panel examines evidence that pulse oximeters may not work as well on dark skin



By Jacqueline Howard, CNN

Updated 6:44 PM EDT, Tue November 1, 2022



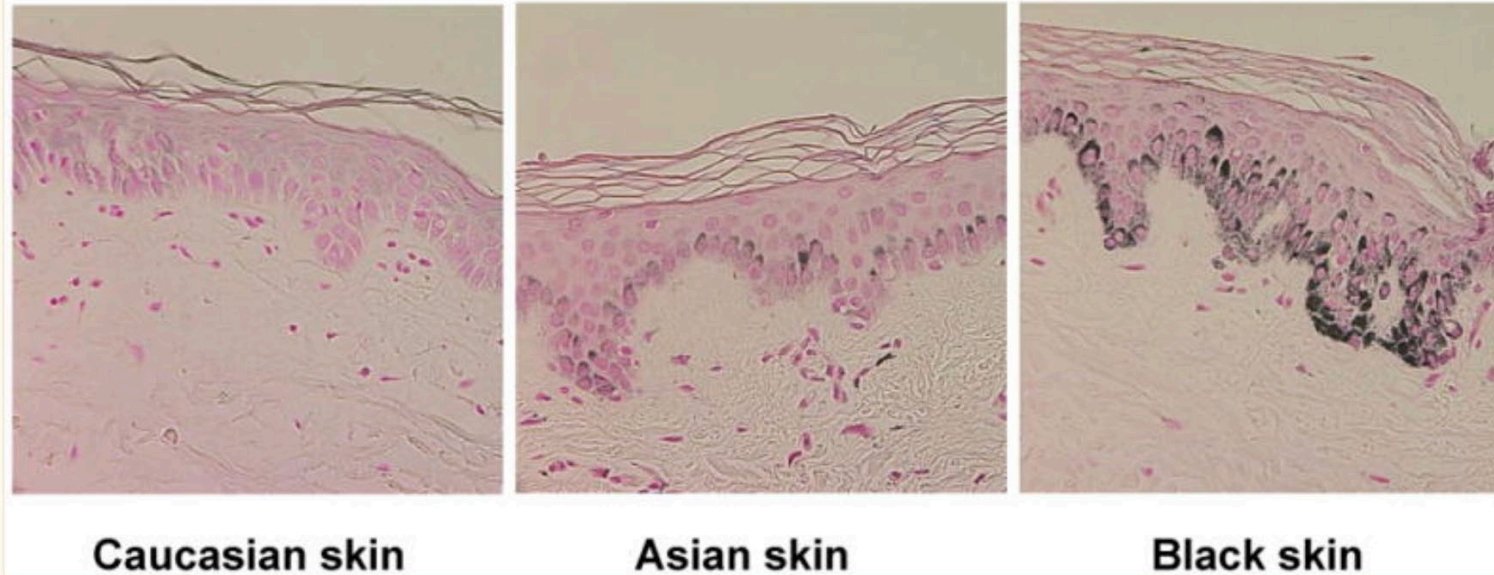
Grace Cary/Moment RF/Getty Images

Pulse oximeters are used to check blood oxygen saturation levels and heart rate, but research suggests these devices may be less accurate in individuals with darker skin pigmentation.



# The Protective Role of Melanin Against UV Damage in Human Skin

[Michaela Brenner](#) and [Vincent J. Hearing](#)



[Figure 1](#)

## Melanin Content in Skin of Different Ethnicity

Histological detection of melanin content using Fontana-Masson staining. Melanin content in the basal layers of the epidermis is substantially higher in **Black** skin compared to Asian or White skin, although the number of melanocytes is virtually identical in skins of different ethnicity.



Carol Channing. PHOTO: PHOTOSHOT/GETTY IMAGES



# Density of lean body mass is greater in blacks than in whites

J. E. Schutte, E. J. Townsend, J. Hugg, R. F. Shoup, R. M. Malina, and C. G. Blomqvist

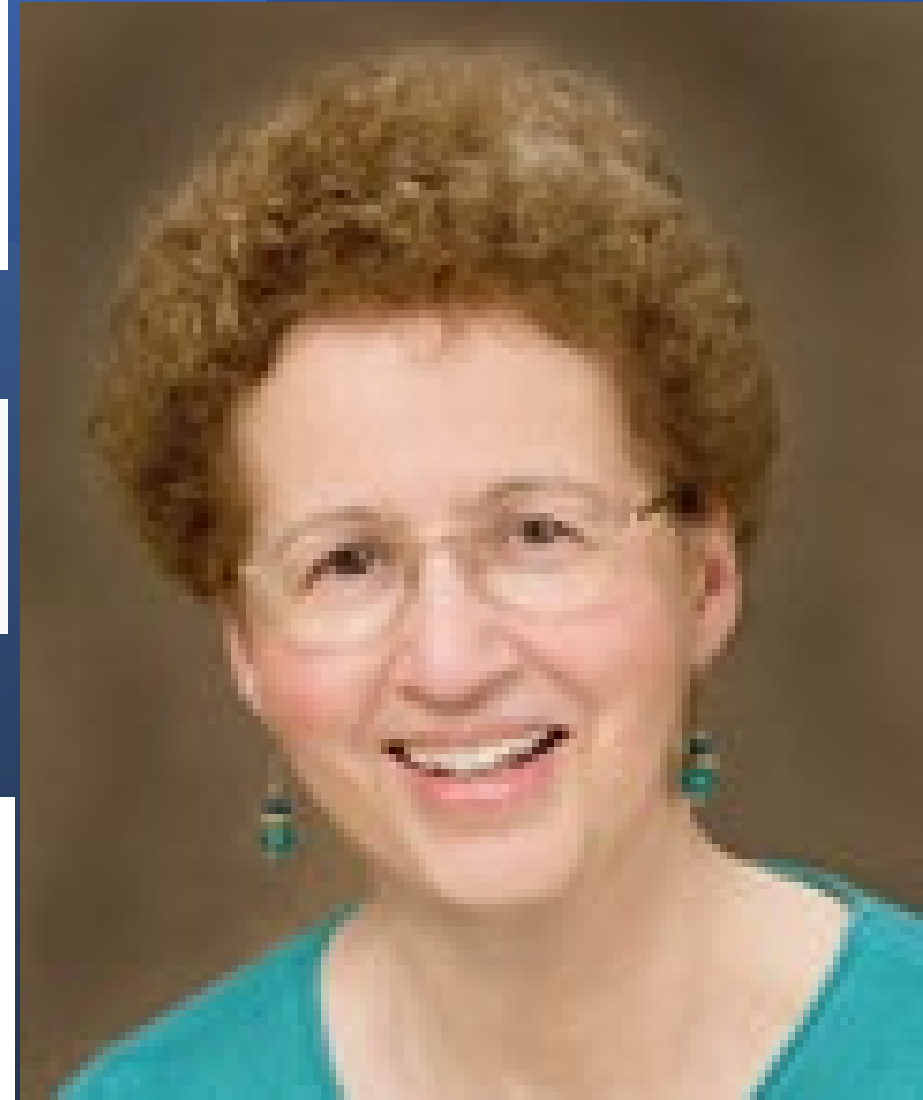
01 JUN 1984 // <https://doi.org/10.1152/jappl.1984.56.6.1647>

## Weaker bones and white skin as adaptations to improve anthropological “fitness” for northern environments

[R. Vieth](#) 

## Racial differences in bone density between young adult black and white subjects persist after adjustment for anthropometric, lifestyle, and biochemical differences

B Ettinger <sup>1</sup>, S Sidney, S R Cummings, C Libanati, D D Bikle, I S Tekawa, K Tolan, P Steiger



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# Race Correction and the X-Ray Machine — The Controversy over Increased Radiation Doses for Black Americans in 1968

Itai Bavli, Ph.D., and David S. Jones, M.D., Ph.D.

**Widely used test kept Black people from getting kidney transplants sooner. Now that's changing.**

## “Race norming” and the long legacy of medical racism, explained

The NFL recently announced it would end the practice, but race norming is still used across the medical field.

By Fabiola Cineas | Jul 9, 2021, 9:00am EDT

Racial differences in gray matter integrity by diffusion tensor in black and white octogenarians

[Ge Liu](#), MS, [Ben Allen](#), PhD, [Oscar Lopez](#), MD, [Howard Aizenstein](#), MD, PhD, [Robert Boudreau](#), PhD, [Anne Newman](#), MD, MPH, [Kristine Yaffe](#), MD, [Stephen Kritchevsky](#), PhD, [Lenore Launer](#), PhD, [Suzanne Satterfield](#), PhD, [Eleanor Simonsick](#), PhD, and [Caterina Rosano](#), MD, MPH

# Structural Racism in Law

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- ❖ **Eugenics Laws**
- ❖ **Funding for Medical Facilities**
- ❖ **Failure to Expand Medicaid**
- ❖ **Limited Access to Medical Care**



# Structural Racism in Law (cont.)

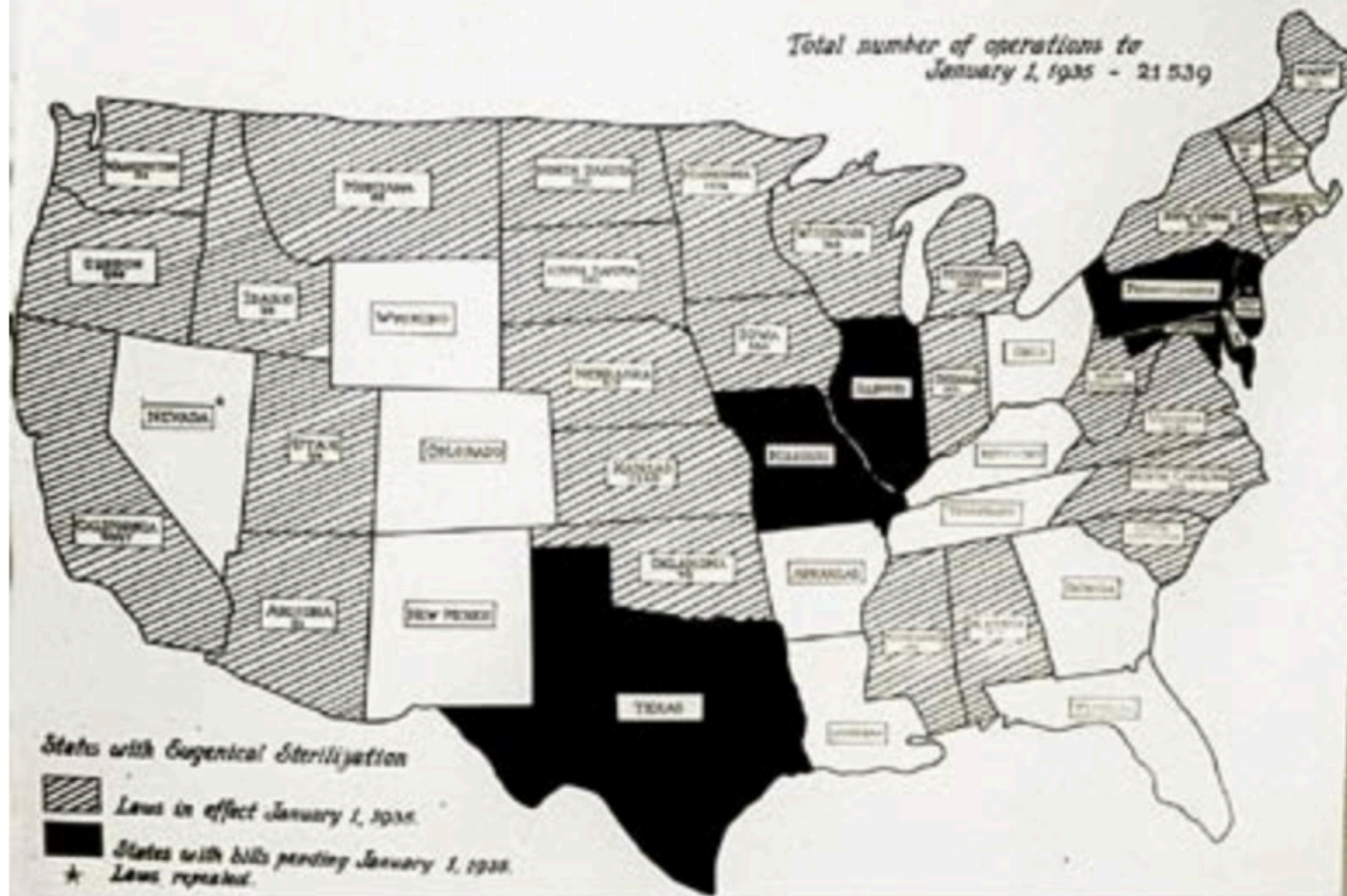
- ❖ **Law is often a tool for structural racism**
- ❖ **Law has been used to limit racial and ethnic minority individuals' citizenship rights to life, liberty, and property**

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## LEGISLATIVE STATUS OF EUGENICAL STERILIZATION IN THE UNITED STATES

AND THE TOTAL NUMBER OF OPERATIONS BY EACH STATE TO JANUARY 1, 1935.

Total number of operations to  
January 1, 1935 - 21 539



### State with Eugenic Sterilization



Laws in effect January 1, 1935.

States with bills pending January 1, 1938.  
Law enacted.

★ Laws repealed.



Laws in effect Jan. 1, 1935



States with bills pending Jan. 1, 1935

\* Laws repealed



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# Structural Racism in Law (cont.)

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Section 622(f) of the Hill-Burton Act stated:

[S]uch hospital or addition to a hospital will be made available to all persons. . . but *an exception shall be made in cases where separate hospital facilities are provided for separate population groups, if the plan makes equitable provision on the basis of need for facilities and services of like quality for each such group. . .*

Hospital Survey and Construction Act, 42 U.S.C. § 291e(f) (2006).



# Structural Racism in Law (cont.)

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## Hospitals That Serve Many Black Patients Have Lower Revenues and Profits: Structural Racism in Hospital Financing

[Gracie Himmelstein MD, PhD](#) ✉, [Joniqua N Ceasar MD](#) & [Kathryn EW Himmelstein M.D., M.S.Ed.](#)

[Journal of General Internal Medicine](#) (2022) | [Cite this article](#)

### Key Results

Among the 574 Black-serving hospitals, an average of 43.7% of Medicare inpatients were Black, vs. 5.2% at the 5,166 other hospitals. Black-serving hospitals were slightly larger, and were more often urban, teaching, and for-profit or government (vs. non-profit) owned. Patient care revenues and profits averaged \$1,736 and \$-17 per patient day respectively at Black-serving hospitals vs. \$2,213 and \$126 per patient day at other hospitals ( $p < .001$  for both comparisons). Adjusted for patient case mix and hospital characteristics, mean revenues were \$283 lower/patient day ( $p < .001$ ) and mean profits were \$111/patient day lower ( $p < .001$ ) at Black-serving hospitals. Equalizing reimbursement levels would have required \$14 billion in additional payments to Black-serving hospitals in 2018, a mean of approximately \$26 million per Black-serving hospital.

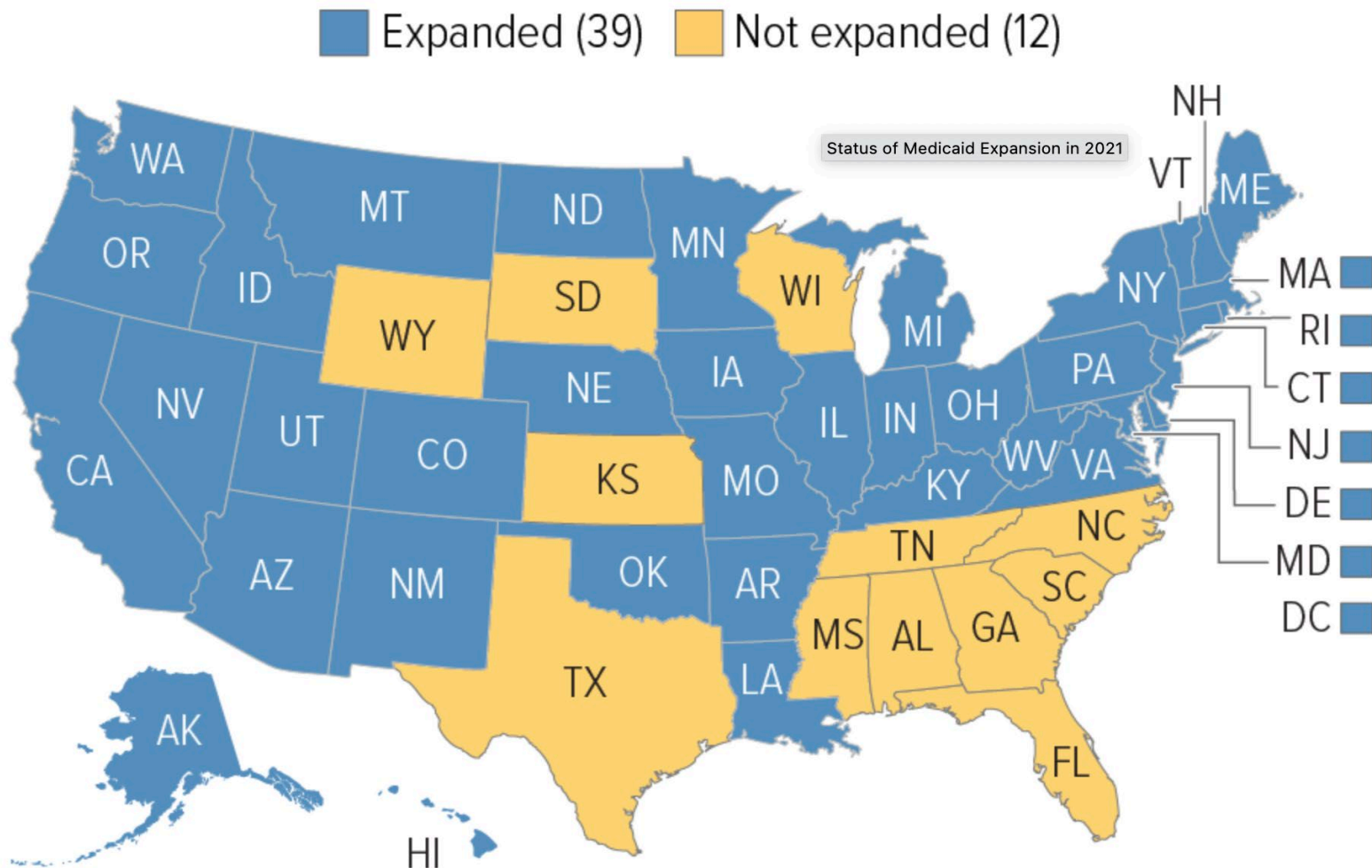
### Conclusions

US hospital financing effectively assigns a lower dollar value to the care of Black patients. To reduce disparities in care, health financing reforms should eliminate the underpayment of hospitals serving a large share of Black patients.

# Structural Racism in Law (cont.)

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## Status of State Medicaid Expansion in 2021



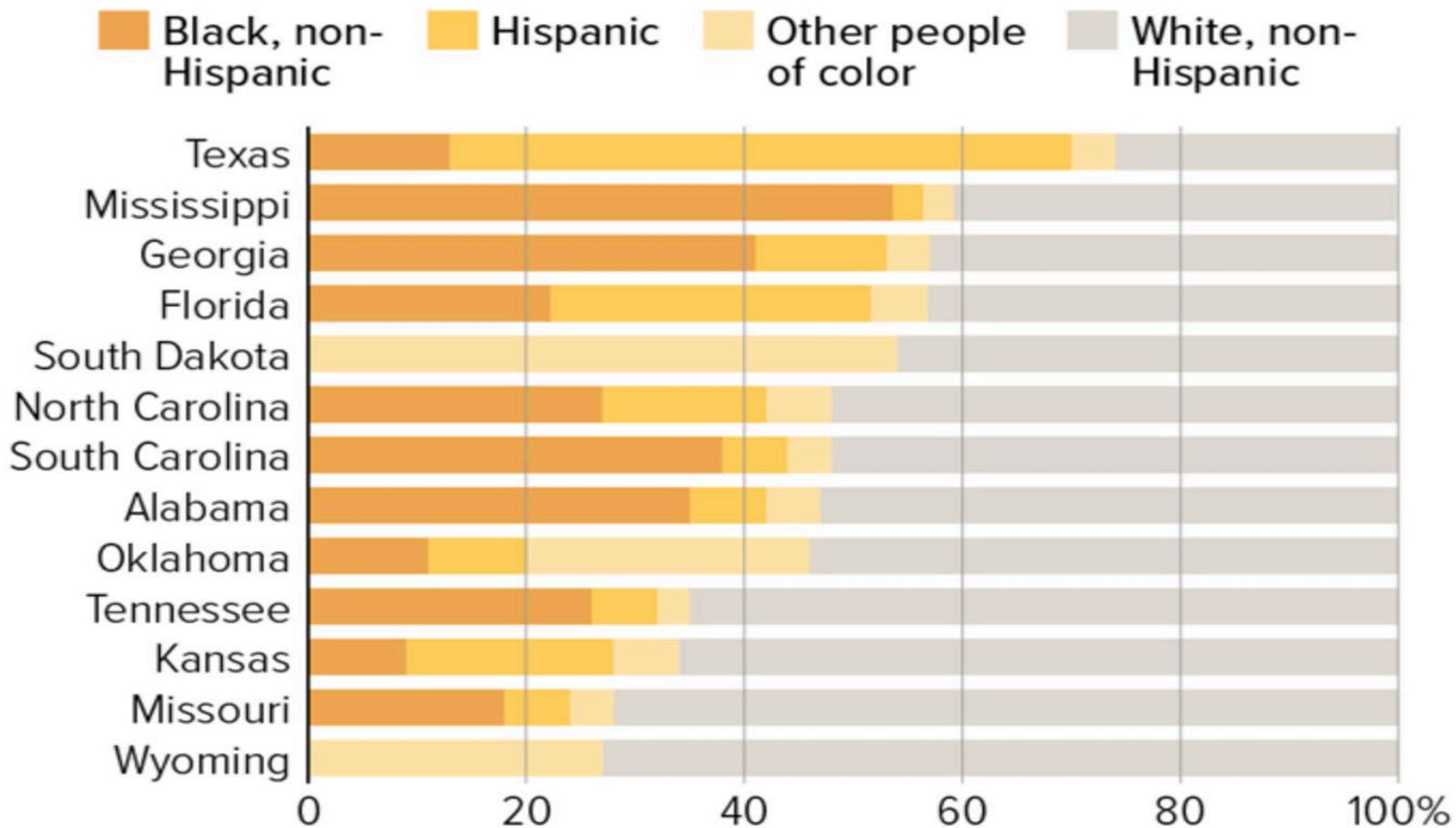
Note: Wisconsin extends Medicaid eligibility to adults up to 100 percent of the poverty line through a waiver. Therefore, Wisconsin has no coverage gap population and is not included in estimates.

# Structural Racism in Law (cont.)

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## Many Black, Hispanic People Would Benefit From Further State Medicaid Expansions

Share of uninsured adults who would become eligible for Medicaid, by race and ethnicity



Note: Estimates by subgroup are not available for South Dakota and Wyoming, so the “other people of color” category represents all people of color, including Black and Hispanic people.

Source: Kaiser Family Foundation based on 2018 Census Bureau data



# Structural Racism in Law (cont.)

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## Title VI of the Civil Rights Act:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance

# Structural Racism in Law (cont.)

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The New York Times

Health

## I Am a Racially Profiling Doctor

By Sally Satel  
Published: May 05, 2002

In practicing medicine, I am not colorblind. I always take note of my patient's race. So do many of my colleagues. We do it because certain diseases and treatment responses cluster by ethnicity. Recognizing these patterns can help us diagnose disease more efficiently and prescribe medications more effectively. When it comes to practicing medicine, stereotyping often works.

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## “Race norming” and the long legacy of medical racism, explained

The NFL recently announced it would end the practice, but race norming is still used across the medical field.

By Fabiola Cineas | Jul 9, 2021, 9:00am EDT

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## Widely used test kept Black people from getting kidney transplants sooner. Now that's changing.



# After losing wife to delivery complications, Georgia man urges lawmakers to do more to protect mothers

By Beth Galvin | Published March 9, 2022 | FOX Medical Team | FOX 5 Atlanta | ➔



Courtesy of Charles Johnson

Kira Dixon Johnson, 39, died April 13, 2016, after bleeding internally for more than 10 hours following a routine C-section. She left behind two sons.

# They Lost Their Pregnancies. Then Prosecutors Sent Them to Prison.

*Dozens of women who used drugs while pregnant have faced criminal charges. Experts expect even more cases now that Roe has been overturned.*



Traister, who had no prior criminal record, faces a potential life sentence for a stillbirth in Oklahoma if prosecutors keep pursuing a manslaughter charge. MERON MENGHISTAB FOR THE MARSHALL PROJECT



# Structural Racism in Law (cont.)

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## Beloved Brooklyn teacher, 30, dies of coronavirus after she was twice denied a COVID-19 test

*Rana Zoe Mungin lost her battle with COVID-19 after a month-long fight.*

By **Arielle Mitropoulos** and **Mariya Moseley**

April 28, 2020, 7:39 PM • 7 min read



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## Cornell Law Professor sues NY over 'racial discrimination' treating COVID

# Structural Racism in Law (cont.)

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## Michigan GOP: Vaccine distribution shouldn't consider race, 'social justice'

### White Michigan residents get COVID vaccine at twice rate of African Americans



Three-person medical teams greet patients at a drive-through COVID vaccine clinic in Detroit. State records show the majority African-American city has one of the lower residential vaccination rates in the state. (BridgeDetroit photo by Valaurian Waller)



## Neo-Nazis target anti-racist doctors at Brigham and Women's Hospital, calling them 'anti-white'



White nationalist protesters gather outside Brigham and Women's Hospital during a rally Jan. 22, 2022.

Image courtesy of observer who asked not to be identified by name. / GBH News

## Detroit health care worker dies after being denied coronavirus test 4 times, daughter says

Kaila Corrothers said that when she thinks of her mother, Deborah Gatewood, there is one thought that lingers: "This did not have to happen this way."

## State adviser: Some NC Latinos sick with COVID-19 are sent home from hospitals

BY LYNN BONNER

JULY 16, 2020 04:51 PM, UPDATED JULY 16, 2020 05:32 PM



## *The Wealthy Are Getting More Vaccinations, Even in Poorer Neighborhoods*

Officials acknowledge that the coveted shots are disproportionately going to white people and that planners' efforts to course-correct are having limited effect.



# Summary

## ❖ Structural Racism in Medicine:

- ✓ Medical Research
- ✓ Race as a Genetic Factor
- ✓ Medical Education

## ❖ Structural Racism in Law:

- ✓ Eugenics Laws
- ✓ Funding for Medical Facilities
- ✓ Failure to Expand Medicaid
- ✓ Limited Access to Medical Care

## ❖ Outcomes:

- ✓ Racism Health Inequities

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# Health Equity versus Health Justice

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- ❖ **Health Equity** is achieved when **every person** has the opportunity to “attain his or her full health potential” and no one is “disadvantaged from achieving this potential because of social position or other socially determined circumstances”
- ❖ **Health Justice** is achieved when **oppression, including structural racism, is eliminated**, and minority groups have the power to develop solutions to achieve health equity for their communities (Yearby, 2023)

# Health Justice

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❖ Legal and policy responses must include a **truth and reconciliation process** that acknowledges the existence of racism and provide a mechanism to overcome trauma (Johnson, 2021)

❖ **Impacted communities**, particularly racial and ethnic minority communities, must be **drive/lead** the creation, implementation, and evaluation of any right to health and healthcare (Benfer, Mohapatra, Wiley & Yearby, 2020)

❖ A right to health and healthcare must be accompanied by **financial supports and accommodations** (Benfer, Mohapatra, Wiley & Yearby, 2020)



# Truth and Reconciliation Process

- ❖ Requires honesty about racism in medicine and prohibiting the use of race as a genetic factor and in clinical algorithms
- ❖ **Acknowledges that racial and ethnic minority individuals continue to be denied medically necessary care, while being targeted for participation in medical research studies**

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# Truth and Reconciliation Process (cont.)

- ❖ Provides opportunities for racial and ethnic minority individuals to tell medical and government officials about the harm they suffered
- ❖ **Includes access to therapy and restorative practices for those harmed**

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# Community Driven Change & Supports

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- ❖ Impacted communities, particularly racial and ethnic minority groups, must drive/lead the creation, implementation, and evaluation of changes in laws, policies, and practices that affect health outcomes (Yearby, 2022)
- ❖ **The government must provide money and access to healthcare for individuals harmed by structural racism, especially during the Covid-19 pandemic (Yearby & Mohapatra, 2021)**



## Additional Readings

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❖ Ruqaiijah Yearby, Brietta Clark, Jose Figueroa, *Structural Racism in Historical and Modern U.S. Health Care Policy*, 41(2) HEALTH AFFAIRS 187-194 (2022)

❖ Emily Benfer, Seema Mohapatra, Lindsay Wiley, & Ruqaiijah Yearby, *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Inequalities During and After COVID-19*, 19 YALE J. HEALTH POLICY, LAW, AND ETHICS (2021)

❖ Amber Johnson, *Truth and Reconciliation in Health Care: Addressing Medical Racism using a Health Justice Framework*, HARVARD PETRIE-FLOM BOG (2021)

# Additional Readings

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- ❖ Charlene Galarneau and Ruqaiijah Yearby, *Reinforcing Racial Hierarchies: Racism and Crisis Standards of Care in the COVID-19 Pandemic*, 14 ST. LOUIS. J. HEALTH LAW AND POLICY 211-249 (2021)
- ❖ Ruqaiijah Yearby, *Structural Racism and Health Disparities: Reconfiguring the Social Determinants of Health Framework to Include the Root Cause*, 48 J. OF L. MED. & ETHICS 518-526 (2020)
- ❖ Ruqaiijah Yearby & Seema Mohapatra, *Law, Structural Racism, and the COVID-19 Pandemic*, 7 OXFORD J. OF LAW AND THE BIOSCIENCES 1-20 (2020)