Racial Union: Law, Intimacy, and the White State in Alabama, 1865–1954. By Julie Novkov. Ann Arbor: University of Michigan Press, 2008. Pp. 368. $75.00 cloth; $26.95 paper.

Reviewed by Kathleen Sullivan, Ohio University

The Supreme Court invalidated bans on interracial marriage in 1967, but Alabama did not remove its own anti-miscegenation provision until 2000. Novkov views bans on interracial intimacy not as a legacy of a bygone era but as a key resource in state-building. Limiting her scope to the development of a single state on a single issue provides a focused lens to track the life of the law and its use in constructing a regime of white supremacy.

Novkov periodizes the span 1865–1954 according to the legal challenges and questions raised by bans on interracial intimacy. In the first period, 1865–1882, Democrats enacted racially based; legislation. Although there were few prosecutions of mixed-race children in Alabama, whites were aroused by the fear of race mixing. States already had the power to decide who could marry under what conditions, so racial requirements could easily be added. Initially, the Alabama Supreme Court invalidated a criminal prohibition on miscegenation in *Burns v. State* (1872) as an infringement of contract under the Civil Rights Act of 1866. Subsequent years were spent chipping away at *Burns*, with Alabama courts finding legal means to circumvent the federal civil rights requirements. By shifting the issue from civic and social equality to the state's duty to protect the citizenry using its authority to regulate marriage, Alabama could elide the individual rights of the Civil Rights Act of 1866 and the Fourteenth Amendment. So long as policies maintained symmetry, anti-miscegenation could pass challenges under the Equal Protection clause. In this "new constitutional order," the judiciary was able to move from cautious acceptance to outright endorsement of miscegenation bans.

With marriage having done the work of state-building, Alabama courts contended with the design of the state's making in the period 1883–1917. In this Jim Crow era, Alabama revised its constitution around white supremacy. Adopting a state interest in protecting future citizens, the state could mark racial purity as a public good that needed state resources to maintain. This gave the state a great deal of power, but it also circumscribed it. Rather than waging a campaign against sexuality, the state targeted the prevention of mixed-race families. The state then had to locate evidence not merely of sexual relations between persons of different race but evidence of a relationship. Defendants and their lawyers could game the system by claiming that the relationship was one of prostitution rather than an extended affair. Defendants

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could also challenge the state's charge of being black, inviting new burdens upon state's evidence. The litigation of this period illustrates the difficulties in maintaining a regime of white supremacy. But in taking care to parse out social behavior that fell under the ban, the courts were rationalizing white supremacy. The project of anti-miscegenation could be rendered distinguishable from racist animus.

Between 1918 and1928, a period preceded by the film *Birth of a Nation*, the Ku Klux Klan, and eugenics, judicial inquiry was strikingly rational. Defense lawyers exploited the loopholes in the evidentiary rules of showing race. Prosecutors responded by drawing on existing resources to demonstrate race, by tracing ancestry or calling in witnesses such as midwives to testify to the defendant's appearance at birth. By the late 1920s courts reached a crisis in proof of race, and judges responded by establishing rules for proving race—admission, association, and physical characteristics.

In the period 1928–1940, Alabama officials drew a sharp line between those racial laws originating in prejudice and the legitimate application of white supremacist principles. White supremacy was delivered dispassionately and neutrally. When the Scottsboro trial occurred, conservatives in the state could afford to urge the defendants' release. Similarly, judges did not hesitate to dismiss suits on technical grounds, which highlighted the rationalism of the system and absolved it of taints of prejudice. Through appellate judges the state could declare that racial invective had no place in the formal legal system and avoid federal intervention.

Novkov steps out of the periodization in one chapter to capture a pattern in white masculinity in the period 1914–1944. White men who bequeathed property to their children were faced with the consequences of anti-miscegenation laws when their bequests to their mixed-race children were called into question. These cases, Novkov says, demonstrate that upper-class white men felt no compulsion to hide their relationships and were confident in using their property as they saw fit. Nevertheless, these cases reflect the internal tensions of this system and demonstrate the ongoing maintenance of a white supremacist regime.

There was little doctrinal development between 1941 and 1954. Alabama spent decades engaged in state-building and then consolidation of a regime of white supremacy, which modernized along with modernization of the state. Any call for colorblindness would serve to reinforce this regime rather than dismantle it.

By narrowing her scope to one state and one legal construct, Novkov produces a history of the opportunities and challenges involved in state-building. By resisting a social account of the law, *Racial Union* demonstrates that a legal regime can insulate itself from society and thus resist social reform. This is a study that becomes quite

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dramatic as state officials encounter problems of their own making and must continually devise new rules to sustain tests for race and intimacy. Regimes—racial or otherwise—take a lot of work to maintain, but that does not mean that they are easy to dismantle.

Case Cited

Burns v. State, 48 Ala. 196 (1872).

Images of Restorative Justice Theory. Edited by Robert Mackay, Marko Bošnjak, Johan Deklerck, Christa Pelikan, Bas van Stokkom, and Martin Wright. Frankfurt am Main: Verlag für Polizeiwissenschaft, 2007. Pp. xiv+266. $32.00 paper.

Reviewed by Rosalie R. Young, State University of New York at Oswego

This volume, consisting of an introduction and 13 chapters, was an outgrowth of the work of the Theory Working Group of the European Co-operation in the Field of Scientific and Technical Research (COST) Action A 21: Restorative Justice Developments in Europe. The authors include scholars from Europe, Israel, South Africa, and the United Kingdom. The three overarching themes and sections in the book are Restorative Justice and Society, Restorative Justice and Law, and Restorative Justice Processes. The articles thus focus on restorative justice theory on both micro- and macrolevels.

The goal of the authors and editors of this volume is to stimulate discussion and debate about restorative justice theory drawn from research and practice. As such, the various contributions look at diverse efforts to involve individuals and communities in peacemaking, criminal justice, and conflict resolution from the varied perspectives of criminology, sociology, psychology, law, linguistics, and philosophy. These researchers, practitioners, and administrators include within their articles a focus on the political aspects of past, current, and future restorative justice practices, processes whose goal is to assist those in conflict to communicate past wounds and promote positive interaction and healing.

Most intriguing for this reviewer is the obvious effort of each of the authors to include the positive and negatives of their concepts and opinions, as well as the conflicting and supporting analysis of other scholars. Common to most restorative justice theories and practices are the goals of inclusion, responsibility, and community self-determination, rather than the promotion of guilt, retribution, and punishment. The question many of the authors raise is whether the variety of restorative justice practices promotes these values.

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