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Julie Novkov

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REVIEW ESSAY: PUT A RING ON IT? LAW AND ORDERING THE BOUNDARIES OF RACE AND SEXUALITY AS STATE WORK

Julie Novkov*

Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Harvard U. Press 2008). Pp. 384. \$18.95.

Fay Botham, *Almighty God Created the Races: Christianity, Interracial Marriage, and American Law* (U.N.C. Press 2009). Pp. 271. \$28.00.

Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford U. Press 2009). Pp. 404. \$26.65.

Elizabeth Smith-Pryor, *Property Rites: The Rhinelander Trial, Passing, and the Protection of Whiteness* (U.N.C. Press 2009). Pp. 391. \$24.95.

Taken together, these four fine books demonstrate the power of race as a concept, a performance, a category, an ideological production, and an institution in the history of the United States. Yet they also show how the politics of sexuality provided a crucial site for the exercise of regulatory authority understood to be in the state's larger interest of organizing and managing race. Anxieties about sexual intimacy triggered conflicts over the boundaries of racial definition, the passage of property, and the meaning of whiteness. In their focus on gender and sexuality as ordering devices, these books advance a rapidly growing body of literature that argues in favor of taking the state's interventions into family structure, legitimate reproduction, and the management of sexuality seriously. The authors join other scholars in arguing that governing at the intersections of gender, race, and sexuality not only affects the individuals, families, and groups regulated, but equally importantly contributes to how the state itself develops over time.¹

The books address somewhat different topics. Ariela Gross explores the conceptual link between blood and race as it played out in legal struggles over miscegenation and

* Professor of Political Science and Women's Studies, University at Albany, State University of New York. Thanks to Kathleen Sullivan for commenting on this essay.

1. See e.g. Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton U. Press 2009); Julie Novkov, *Racial Union: Law, Intimacy, and the White State in Alabama, 1865-1954* (U. Mich. Press 2008); Gretchen Ritter, *The Constitution as Social Design: Gender and Civic Membership in the American Constitutional Order* (Stanford U. Press 2006); Patricia Strach, *All in the Family: The Private Roots of American Public Policy* (Stanford U. Press 2007); Kathleen Sullivan, *Constitutional Context: Women and Rights Discourse in Nineteenth-Century America* (Johns Hopkins U. Press 2007); Priscilla Yamin, *The Search for Marital Order: Civic Membership and the Politics of Marriage in the Progressive Era*, 41 *Polity* 86 (2009).

racial identification in *What Blood Won't Tell*. In *Almighty God Created the Races*, Fay Botham parses the often oversimplified relationship between interracial intimacy and religion, tracing how Catholic and Protestant viewpoints differed from each other and differed regionally. Peggy Pascoe's *What Comes Naturally* provides a historical account of the criminal regulation of interracial intimacy (including western regulations that went beyond black and white), showing how legal struggles provided a stage for competing racial ideologies. And finally, Elizabeth Smith-Pryor's *Property Rites* uses many of these themes as an analytical backdrop to her account of the celebrated annulment trial of Leonard and Alice Rhinelander in New York in the 1920s, a suit based on Leonard Rhinelander's claim that Alice had successfully duped him into believing that she was a white woman.

This review will discuss each book in turn, but despite the different terrains that the books survey, they raise a common set of themes worth noting. First, all of the books highlight the significance of sexuality and its regulation to state building. Second, all the authors view law as an unstable source of racial meaning and racial definition. For these authors, law has been a site for struggle over the meaning and definition of race through disputes that could not rest upon the plain letter of the law for resolution. Third, the authors all see legal disputes over boundaries – boundaries between the races, boundaries between legitimate and illegitimate sex, boundaries demarcating the extent of state power to impose its moral will in the public's interest, and boundaries between federal and state authority – as the crucial place to find meaning and to understand the operation of power. And finally, all of the authors describe these struggles' significance beyond their impact on the laws of marriage and race, and all explore how they influenced, redirected, or reflected crucial moments in the development of the American state. As a group, the books move beyond recounting the legal history of America's regulation of race and racial categories; instead, they highlight the work of racialized law and legal categories in defining and reinforcing the boundaries of full citizenship and the state's authority.

My identification of these common themes should not imply that the books are pursuing the same agendas or making the same arguments. While all address racial identity at the intersections of culture and law, they take different approaches to explore these intersections. The authors employ different time frames, ranging from Botham's broad survey of Catholic and Protestant beliefs about race from the colonial period to the role of religion in *Loving v. Virginia* on the one hand to Smith-Pryor's focused reconstruction of the Rhinelander trial in 1925. The authors disagree subtly concerning the role of law; Botham and Smith-Pryor seem to see it as largely reflective of cultural (and in Botham's case, sometimes religious) norms, while Gross attributes an active and directive role to law, and Pascoe sees law as providing a set of boundaries within which cultural and social struggle play out in ideological terms. Rather than summarizing each book, this review will highlight arguments in each that touch on how drawing boundaries – between theological standpoints, between races, between legitimate and illegitimate sexual encounters, between recognized and denied performances of gendered citizenship, and around types of rights claims – functioned to create dynamic, flexible, multiracial state structures that reinforced and reproduced white supremacy.

Ariela Gross, unlike the other authors, does not focus exclusively on intimate relationships, although she presents interracial intimacy as a central site for legal struggles over the meaning of race and its connection to blood. The fundamental story of *What Blood Won't Tell* is how Americans grappled with racial definition and its relationship to racial identity. Gross argues that while cultural institutions constructed (often competing) racial meanings, law acted as the final arbiter of these meanings' legitimacy. Legal struggles thereby definitively fixed race for individuals and groups within the context of individual cases, and contributed to the gradual narrowing of possible ambiguous expressions of race and racial mixture.² These struggles often invoked "blood" metaphorically, but blood operated as more than mere metaphor, constraining and shaping the ways that whites in positions of power understood and interpreted the racial performances of the individuals and groups whose identities they were determining.

Gross details these struggles over time, but does not embrace a linear or progressive narrative. Rather, she highlights key moments of conflict and resolution that established boundaries within which future debates would occur. Her work demonstrates that the project of establishing racial definitions and meanings was, at bottom, one of reinforcing white privilege: as the boundaries were drawn, they both demarcated the privileges to which nonwhites lacked access and marked these privileges as exclusively for and exercised by whites.³

Gross's meticulous analysis of legal controversies regarding racial definition highlights the difficulty of pinning down precisely what race was and is. What she calls the "racial common sense" that we acquire by living in America for a time and absorbing its cultural norms enables us to know, in most cases, our own and others' racial identities. While deception is possible in this framework, the background assumption is that race is fixed as a set of categories over time. Litigation, however, brings into sharp relief the extent to which race has been an "ever-shifting category" dependent upon multiple factors that differ in their salience over time.⁴

Fixed notions of race were not brought to American shores; they developed during the colonial era largely through white property owners' efforts to deal with three different subordinated groups: Indians, African slaves, and white indentured servants. Gross traces how the early American state committed to the vital distinction between the enslaved black race and the subjugated Indian nations, yet maintained implicitly the idea of Indianness as an essential and racialized quality.⁵ For Gross, the emergence of race as an aspect of status and as an essential identity in the 1830s was crucial in bolstering southern resistance to emancipation and later in the raising of freedmen and women into more equal status relations with whites. Later, she notes how the conjunction of American imperialism and anxieties about immigration with forced assimilation for Indians contributed to and reflected Progressive ideas about building a better society and

2. Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* 11-13 (Harv. U. Press 2008).

3. *Id.* at 14-15.

4. *Id.* at 16-18.

5. *Id.* at 22-30.

politics through racial agendas. She uses the insights gained from her earlier analyses to explore the mid-twentieth century struggles over how to situate Mexican Americans within the established racial framework. And she ends by considering how the census became a target for aspirational identity politics as the twenty-first century began. By addressing controversies over racial definitions beyond black and white, Gross shows how the struggles over these boundaries contributed to the current configurations of racial categories in America as well as how fights over Indianness and whether Mexican Americans were a race helped to shape definitions of the primary categories of whiteness and blackness.

While law forms the basis for Gross's analysis, she describes how legal controversies regarding race occurred in different institutional spaces and were initiated by different institutional actors over time. State and local courthouses hosted most struggles over racial identity in the nineteenth century, but federal courts, administrative agencies, and Congress played much greater roles in the early twentieth century. Civil rights lawyers joined the fray by affirmatively bringing suits to adjudicate the racial identities of Mexican Americans in the mid-twentieth century, and the census struggle has played out in political institutional sites as well as in administrative agencies.⁶ Gross develops her analysis largely by showing how these issues played out in concrete legal struggles, providing fascinating stories of how real individuals wrestled with their existence on the boundaries of race and identity.

One notable element of Gross's analysis is her description of how litigation and administrative decision making with regard to Indians gradually chipped away at any capacity for Indian nations to construct legible multiracial identities, particularly for tribes that had absorbed blacks in the antebellum era. She avoids writing a morality play either with Indian tribes' attempts to embrace multicultural brotherhood constantly being thwarted by government bureaucrats or with Indian tribes' embracing whites' anti-black racism as part of their process of assimilation. Rather, she shows how different tribes attempted to negotiate the possibilities for multiracial Indian identity in the context of their own histories, their regions, and the regulatory regimes they faced.⁷ This analysis extends into Hawaii and enables Gross to contribute thoughtfully to ongoing discussions about the role of blood quantum in debates over programs reserved for citizens descended from Native Hawaiians.⁸ Her analysis of The League of United Latin American Citizens's ("LULAC") efforts to use claims of whiteness to advance the cause of Mexican Americans and protect them from segregation in the southwest from the 1930s through the 1960s and the emergence of Chicano pride among the Mexican American working class is likewise illuminating.⁹

In *Almighty God Created the Races*, Botham's investigation of the religious

6. *Id.* at 14.

7. Gross, *supra* n. 2, at 111-177.

8. *Id.* at 178-210.

9. *Id.* at 269-287. LULAC was founded in Texas in 1929 simultaneously as a "race pride" organization and a supporter of "100% Americanism." *Id.* at 269. The struggle to define Mexican Americans strategically as other whites culminated in the Supreme Court's 1954 ruling in the jury selection case of *Hernandez v. Texas*, 347 U.S. 475 (1954), in which the Court held that Mexican Americans did constitute a race and were eligible for Fourteenth Amendment protection. Gross, *supra* n. 2, at 288-289.

background in legal and cultural addresses of interracial marriage complicates contemporary debates over the incursion of religious belief into the spheres of public debate, law, and regulation. Left commentators favoring the legalization of same-sex marriage have excoriated arguments from Protestants and Catholics who oppose same-sex marriage on religious grounds. Botham challenges broad arguments that the incursion of religion into the public and political spheres is dangerous and inappropriate, but she also hermeneutically traces religious beliefs about marriage, locating a more complicated and contradictory legacy in the history of formal and lay religious responses to interracial couples. She begins with conquest and colonization, highlighting not just an initial separation in how Protestants and Catholics understood the humanity of the African, but also in how Protestants and Catholics understood the proper approaches to embracing and expressing a life of faith. The book explains convincingly why the Catholic Church led the fight against bans on interracial marriage in the past but today remains a staunch opponent of same-sex marriage.

Botham highlights the significance of religious doctrine in driving both beliefs about the legitimacy of interracial marriage and public policies built around these beliefs. By the late 1880s, Catholic doctrine was clearly and strongly unified around the principle of the divine brotherhood of humanity, though American progressive Catholics had embraced this principle earlier.¹⁰ This primed Catholics to support, and in some cases lead, the struggle to overturn or rescind laws against miscegenation in the twentieth century. Southern Protestant ministers and theologians, however, relied on the Biblical tale of Noah and his sons to demarcate rigid barriers between races and to ground scientific reasoning based on this premise after the Civil War.¹¹ In the nineteenth century, Protestantism in general was far less unified and hierarchically driven than Catholicism and Northern Protestants embraced more varied views. But by the beginning of the twentieth century, organized Protestantism had become a bulwark of segregation in the south as well as nationally, and Protestants largely supported the continued existence of such laws, particularly in the south.¹² Another major distinction for Botham was the sacramental nature of marriage for Catholics. Marriage as a sacrament led to Catholics' embrace of freedom to marry the partner of one's choice as a paramount value and to the elevation of the church as the "sole entity with the authority to determine which circumstances might impede one person from marrying another."¹³ This stance helps to explain the puzzle with which Botham begins her book: the involvement of the Catholic Church in the landmark state case of *Perez v. Sharp*, which resulted in a 4-3 ruling overturning California's anti-miscegenation law in 1948.¹⁴ While Justice Traynor's well known ruling for the Court passed over the religious liberty argument advanced by the plaintiffs opposing the statute, a key concurrence by Justice Edmonds relied directly on the principle that the law violated Catholics' religious liberties.¹⁵ This

10. Fay Botham, *Almighty God Created the Races: Christianity, Interracial Marriage, and Law* 111-114 (U.N.C. Press 2009).

11. *Id.* at 97-111.

12. *Id.* at 111.

13. *Id.* at 71.

14. *Perez v. Sharp*, 198 P.2d 17 (Cal. 1948).

15. *Id.* at 34-35.

ruling initiated a cascade effect in the west, leaving the states formerly composing the Confederacy as the last holdouts as *Loving v. Virginia*¹⁶ approached the U.S. Supreme Court in the 1960s.¹⁷ Botham also explains how the theology of marriage as a sacrament contributed to the widespread Catholic support of an amicus brief on the Lovings' side of *Loving v. Virginia*; southern Catholic leaders, albeit after some persuasive groundwork, largely rallied around Richmond Bishop John J. Russell's criticism of Virginia's statute on the basis of Catholic doctrine.¹⁸

Botham ends her book with an analysis of how religion helped both Catholics and Protestants to make meaning and to advocate for policies through different arguments about the role of religion in civic life. The differences she observes lead her to explore the relationship between epistemology and hermeneutics to understand how transformative interpretations arise from text-based worldviews.¹⁹ She produces a related analysis of cultural epistemology and hermeneutics as they relate to legal understandings of race. Literal textualism in law as in religion leads into a hermeneutic circle in which "[i]f a reader 'knows' a text to be 'true' and her reading of it to be 'literal,' this preconceived paradigm for viewing the text in fact shapes that 'literal' interpretation" – while simultaneously masking the fundamental bases of these truths in human interpretation.²⁰ These observations enable her to explain how the Roman Catholic Church, which led progressive religious opposition to anti-miscegenation laws through reliance on the sacrament of marriage, has stalwartly opposed same-sex marriage. She expresses cautious hope that Protestants might use the epistemological space within their theology to "develop a theology of marriage that mandates these couples' religious right to marriage."²¹

Like Gross, Peggy Pascoe also explores litigation addressing racial classifications, but her primary purpose in *What Comes Naturally* is to show how miscegenation laws and their unquiet legacies shaped both race and nation in the United States from the Civil War through the present. She explores the rise of concerns about interracial intimacy and marriage during the Civil War and in response to emancipation. These initial concerns presented a white and black framework, but this framework prevailed only briefly. Late nineteenth-century Asian and Pacific Islander immigration to the west in conjunction with the concentrations of Native Americans in some western states sparked fearful white policy makers to expand "miscegenation" to incorporate wide-ranging worries about the contamination of whiteness by a variety of other races that had to be defined and delimited against whiteness.

Pascoe focuses on the role of arguments from nature in the development of policies against interracial intimacy over the decades. She finds that nature and beliefs about what was unnatural were highly important frameworks that channeled multiple racial ideologies. Nature defined what race was, where the boundaries of the races lie, and why

16. *Loving v. Va.*, 388 U.S. 1 (1967).

17. Botham, *supra* n. 10, at 148-157.

18. *Id.* at 170-174. In addition to addressing north-south differences among Protestants, Botham develops an interesting analysis of the nuances of Catholic beliefs and practices in the multiracial and multiethnic west.

19. *Id.* at 182-189.

20. *Id.* at 188.

21. *Id.* at 190.

the white race could not countenance reproduction with the other races, though scientific observation and common conceptions of racial performance were sometimes necessary to determine what nature dictated in particular cases. But while nature appeared discursively as a constant and timeless phenomenon, Pascoe reveals how it changed through the periods she addresses in relation to different types of legal controversies arising with regard to interracial intimacy.

Pascoe's analysis likewise notes the framework that nature provided for incorporating gender and reproduction in the legal analysis to justify states' actions to protect their public interest in women and children. Gender also shaped racialized decisions affecting property distributions, a process led by western states. While scholars have extensively addressed the racialized agendas of bans on interracial intimacy between blacks and whites, Pascoe's work complicates this picture dramatically along racial and gender lines by addressing the west as a distinctive region. As she shows, "[t]he western racial projects of miscegenation law were carved out in highly gendered ways that functioned to sustain the system of white supremacy, whether by protecting white womanhood or by protecting white property."²² Protecting the sanctity of white womanhood, for instance, led California to develop the category of the "Malay race" to include – and darken – Filipinos so that they could not intermarry with white women.²³

Pascoe also reviews the campaigns against miscegenation laws, showing how the NAACP, an early leader in the struggle, became ironically trapped through its gradual increase in success and political stature through the 1940s and 1950s. The NAACP's fear of the explosive nature of miscegenation contributed to activists' reframing of the problem around interracial marriage as a natural right, and as Botham's book discusses, Catholic advocates for the religious freedom to marry across racial lines stepped in to fill the void. However, rather than focusing on the role of Catholicism as Botham does, Pascoe shows how this shift provided Associate Justice Traynor with the opportunity to launch a full-scale assault on miscegenation as the bulwark of California's system of white supremacy in his opinion for the Court in *Perez v. Sharp*.²⁴ Pascoe details the simultaneous artful dodging of miscegenation engaged by the U.S. Supreme Court and the NAACP in the post-*Brown* era as the ACLU and the Japanese American Citizens League combined forces to press relentlessly on judicial and (to a much lesser extent) legislative fronts to eliminate the laws state by state.²⁵ Through this combination, the campaign took on a multiracial cast.

Ultimately, however, Pascoe concludes that the NAACP had to get involved both because of its seniority and authority and because of the continued centrality of blackness in the struggle to maintain white supremacy through the maintenance of an anti-miscegenation regime. The outcome of this involvement and the Supreme Court's

22. Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* 108 (Oxford U. Press 2009). Pascoe notes that Indian policies implemented in the west between the 1890s and 1920s actively entrenched white supremacy by enabling the appropriation of the real property of Indian women who had been married to white men. See generally *id.*

23. *Id.* at 154-159. See also Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton U. Press 2005).

24. Pascoe, *supra* n. 22, at 200-204, 210, 221.

25. *Id.* at 231-245.

desire to link the issue with segregation was the pair of cases that lifted bans on interracial intimacy nationwide: *McLaughlin v. Florida* and *Loving v. Virginia*.²⁶ Unlike many legal commentators, Pascoe is critical of *Loving*'s analysis of race, arguing it is rooted in the politics and legal developments of the period between the late 1940s and the 1960s. For Pascoe, the *Loving* analysis is flat and uninspired, even though Justice Traynor showed in comprehensive terms that California's law was rooted in the political notion of white supremacy and that race had no coherent biological meaning and the NAACP's Legal Defense Fund had successfully established the legal frame that "the equal protection clause flatly forbade a state from classifying by race."²⁷ *Loving* rested primarily upon a simple rejection of racial classification, with freedom to marry appearing later in the Court's opinion as a leitmotif. Chief Justice Warren's analysis for a unanimous Court followed the line of previous decisions rejecting white supremacy, but rejecting it as a particular privileging of one race over others in fairly abstract terms.²⁸ This, argues Pascoe, devastatingly provided the groundwork for the emergence of a conservative vision of racial colorblindness that could affirmatively invoke classic cases and moments from the civil rights movement in the 1950s and early 1960s for support.²⁹

The final book, Elizabeth Smith-Pryor's *Property Rites*, brings these issues into direct focus through her analysis of a single case. Leopold and Alice Rhinelanders' trial for annulment in New York in the 1920s did not produce influential case law or a Supreme Court ruling, but it did generate a tsunami of local and (particularly in black newspapers) national coverage. The way the case unfolded revealed much about how anxieties over racial definitions and differentiations operated in the north as well as the south and west in the twentieth century.

Since New York did not legally ban interracial marriage, Smith-Pryor's central concern is to explain how wealthy heir Leonard Rhinelanders could bring a suit for annulment against the woman he had married, Alice Jones, on the basis that she had intentionally concealed her black racial heritage from him. As Pascoe notes, the trial occurred after several states in the north and west had considered but rejected adopting bans on miscegenation. Secondarily, Smith-Pryor asks why the trial generated so much public fascination and why the public commentary on it portrayed it as so socially and culturally significant.³⁰ She concludes that the trial brought together rising anxieties about the permeability of racial and class boundaries in the 1920s. She shows also that the trial highlighted how white New Yorkers and other white northern city dwellers struggled with the influx of African Americans into urban spaces in the early twentieth century as well as their rising anxieties about the sexual adventurousness of the youths of the day.

The book presents a detailed history of the Rhinelanders' courtship and brief marriage, rudely interrupted by the stunning "discovery" by the New York media that

26. *McLaughlin v. Fla.*, 379 U.S. 184 (1964), laid the groundwork for *Loving* by invalidating a Florida ban on interracial cohabitation.

27. Pascoe, *supra* n. 22, at 265.

28. *Id.* at 283-284.

29. *Id.* at 287-306.

30. Elizabeth Smith-Pryor, *Property Rites: The Rhinelanders' Trial, Passing, and the Protection of Whiteness* 3-5 (U.N.C. Press 2009).

Leonard Rhinelander, a member of the elite New York Four Hundred, had married a woman whom reporters identified as black. Smith-Pryor focuses particularly on the trial and the lead attorneys' tactics. Most scandalous to contemporary observers, and likely most interesting to Smith-Pryor's audience, was Alice Rhinelander's attorney's decision to display her body before the jurymen to demonstrate that any reasonable man who had seen her naked would have known that she was no Spaniard. This tactic simultaneously questioned Leonard Rhinelander's honesty and judgment and reassured the jury and the breathless public that blackness was knowable and discernable by anyone who chose to look closely and dispassionately.

While Alice Rhinelander won the trial and retained the title of Mrs. Rhinelander, her victory came at significant cost. Part of what enabled the jury's verdict in her favor was their knowledge that both she and Leonard had pledged never to live together afterward. In order to win, her attorney displayed her body and introduced letters exchanged between her and Leonard establishing not only that they had engaged in premarital sex, but, furthermore, that he had orally pleased her and she had stimulated his genitals manually. While Leonard's attorney's portrayal of Alice as a dusky vampire intent on seducing the weak-minded Leonard for his fortune did not convince the jury, Alice nonetheless succeeded because the jury saw both her appearance and actions as so consonant with what they expected from a mulatta that they rejected out of hand Leonard's pleas that she had concealed herself.³¹ While Alice did manage to acquire and hold a fraction of the Rhinelander fortune during her lifetime, her separation from Leonard prevented the passage of this property on to a next generation of mixed children with possible hereditary entrée into the white world of power and privilege that ruled New York elite society.³² In Smith-Pryor's analysis, the trial enabled white New Yorkers to reassure themselves of their comparative lack of racial prejudice as the rising tide of Klan political activism swept through the south, but the outcome did not seriously threaten the social or political order.

On the whole, these four books advance our understanding of how the state's oversight of intimate sexual relationships has reflected cultural anxieties about race and whiteness in America throughout history. Read together, they provide a nuanced account of how legal struggles over race and sexual intimacy have operated on the ground to shape people's lived experiences—but also note how these struggles have shaped the American state's development over time. They also rely upon and reinforce the idea that sexual intimacy, reproduction, marriage, and family were crucial concerns that touched directly on the public's interest and warranted a high degree of state intervention and control.

The books contribute to historical analyses by bringing law and legal development into the picture, both in terms of how law contributes to large-scale, national and statewide development, but also by explaining the law's enormous influence on the quotidian elements of human life in the United States over time. The relationships currently identified in law as the most private and intimate were, for most of the nation's history, a space for state building and for the expression and refinement of white

31. *Id.* at 234-236.

32. *Id.* at 239-252.

supremacy.

Scholars taken by this idea can explore what this means for contemporary efforts to regulate intimate relationships in the shadow of this legacy. All of these writers have undoubtedly considered the meaning of the histories they construct for the contemporary struggle over legitimizing same-sex marriages. Their work raises new questions about this struggle. What state-building work has the limiting of marriage to dyads composed of a man and a woman accomplished? What kinds of disputes have recently addressed the boundaries of legitimate and illegitimate intimacy and state-recognized bonds, and what have these disputes revealed about the state's interests? What does the current debate over same-sex marriage reveal about belonging and civic membership and the terms on which they are extended to individuals who do not fit the norms? What kinds of performances of gender and sexuality underlie the prevailing models of marriage, and what kinds of power relations inhere in these performances and models? How is contemporary marriage naturalized, and what elements of it can be challenged on this basis beyond the obvious challenges that same-sex marriage and polygamy pose? And can the opening of marriage to same-sex couples transform the kind of work that marriage does for the state, making it less ascriptive and hierarchic?

Fundamentally, the history of states' regulating sexual intimacy and drawing boundaries that demarcate acceptable and unacceptable bonds grounds the ascriptive work that these relationships performed in the past and continue to perform. Understanding this history – as these four books press us to do – is the best way to dismantle the structurally embedded injustices that this regulatory regime has perpetrated and continues to perpetrate.