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Book Review (Paul Frymer's Black and Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party).

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substantive differences among competing interpretations often end up being rather small. So when contributors assert that the decision had an identifiable impact on attitudes and actions, what they often mean is that school desegregation had such an impact. If one supports a claim for *Brown*'s efficacy by citing the school desegregation that took place in the wake of the 1964 Civil Rights Act, then there really is no debate, as revisionist scholars (such as Gerald Rosenberg and Michael Klarman) readily concede that congressional action was effective. But once *Brown* becomes synonymous with school desegregation itself, then the question of the decision's impact dissolves into a tautology. What is left is a different—and ultimately more important—question, over the value of racially integrated education. On this question, the diverse contributors to this collection speak with one voice, powerfully and often eloquently describing the costs of segregation and the value of integration to their school experiences.

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Paul Frymer, *Black and Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party*, Princeton, N.J.: Princeton University Press, 2008. Pp. 202. $27.95 (ISBN 978-0-691-13465-9).
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Frymer's thought-provoking book contrasts the judicial branch's unintended and unexpected success in ending unions' discriminatory practices with the failure of the other branches and the labor movement to do so. Importantly, Frymer uses this contrast to demonstrate the judiciary's overlooked role in building the late twentieth-century American state.

Frymer argues that, during the early twentieth century, racism warped the United States' system of representative democracy and divided the Democratic Party. As a result, policymakers encoded racism in the structures of the modern American state. For instance, Congress and the President designed programs for addressing union discrimination to be ineffective and divided responsibility for these programs among multiple federal offices, including the National Labor Relations Board (NLRB), executive committees, and the Department of Labor. These federal offices then worked at cross purposes and with little internal resources or resolve. The result was "policy fragmentation and, ultimately, institutional chaos" (20).

The labor movement also failed to recognize and address its systemic race problems, Frymer concludes, despite persistent prodding by the NAACP. Frymer recognizes that in the mid-twentieth century, the AFL-CIO and

some individual unions supported civil rights organizations and sought passage of civil rights laws. However, he contends that even the most racially progressive labor leaders failed to grasp the scope of labor's race problem, let alone resolve it.

After decades of government ineffectiveness and labor movement inaction, in 1964, Congress finally passed the Civil Rights Act, which created a new agency, the Equal Employment Opportunity Commission, to address racial discrimination by unions. Once again, Republicans and southern Democrats limited the act's effect by denying this agency enforcement powers, relying instead on court enforcement. Unexpectedly, this policy choice actually contributed to the law's success.

During the 1960s and 1970s, unrelated institutional changes in the judicial branch made federal courts much more effective at integrating unions than anyone had anticipated. Revisions to the Federal Rules of Civil Procedure facilitated sweeping class actions and enhanced federal courts' enforcement powers. Meanwhile, attorney's fee provisions gave the best lawyers financial incentives to bring civil rights lawsuits. These changes in courts and legal process unintentionally enabled courts to dismantle unions' discriminatory practices. They also gave courts a new and overlooked role in building the twentieth-century American state.

Nevertheless, by creating a new agency and a separate legal regime to address employment discrimination, Congress "institutionalized the labor-race divide," ensuring that labor and civil rights would proceed in tension with each other (2). This institutional approach left labor discrimination in the hands of officials, attorneys, and judges who were neither familiar with unions nor motivated to harmonize civil and labor rights. This court-based civil rights regime gravely weakened labor policy and the labor movement.

Frymer is a political scientist; nonetheless, *Black and Blue*, which relies on a rich array of archival sources and makes historically sensitive theoretical arguments, will be of interest to legal historians and historians of the civil rights and labor movements. Indeed, Frymer makes a number of important historiographic contributions. Frymer joins scholars such as Risa Goluboff and Nancy MacLean in disputing the view that courts provided a "hollow hope" for achieving equal citizenship for African Americans. He also challenges historians who argue that, during the 1950s, the NAACP ignored working-class African Americans and contends that scholars have too often explained racism in the labor movement as a psychological phenomenon afflicting individual workers, rather than as a systemic and institutional problem.

At the same time, historians may find aspects of Frymer's account too static. Although Frymer recognizes some change at the margins, he ultimately argues that the racial politics of the Democratic Party, Congress, federal agencies, and the labor movement remained relatively constant throughout the twentieth century. This approach minimizes contingency and bypasses some hard historical

questions. For instance, the NLRB's position on race was more internally conflicted and historically variable than Frymer allows. In the 1960s and 1970s, the NLRB sought to address racism not only with regards to racialized speech during union elections (which is the subject of a fascinating chapter) but also with respect to collective bargaining and union membership. Thus, the NLRB's unwillingness to adress unions' racial practices cannot explain why courts ultimately led the way in dismantling union discrimination, or why civil rights became so thoroughly divorced from labor rights.

Frymer fruitfully subjects courts to the kind of institutional analysis generally reserved for the political branches. His conclusion that the New Deal led to a new role for courts as agents of, rather than checks on, state-building is one ripe for historical elaboration. That his focus on the changing role of the courts may obscure changes occurring elsewhere in government and society should not deter historians from engaging with this excellent book.

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Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America*, New York: Oxford University Press, 2009. Pp. 416. $34.95 (ISBN 978-0-19-509463-3).
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Coined during the 1864 U.S. presidential campaign, the term "miscegenation" signaled freshened hostilities in the politics of white supremacy. It added a sense of popular horror to "amalgamation," the old term for racial interbreeding. Remonstrating against emancipating blacks, it invoked cudgels of social control and in explicit racial terms urged extending barriers slavery had safely maintained. It pointedly maligned interracial coupling. It labeled interracial sex as perverted. It cast interracial marriage as an injury to public morals and a detriment to social development. It stigmatized the acts, the actors, and their offspring.

Launched to valorize and vindicate white supremacy, the miscegenation campaign grew in the 1860s to venerate race as an essential barrier ordained by what America's founding Declaration termed "the Laws of Nature and of Nature's God." Consecrating the asserted self-evident truth of necessary racial purity, adherents to a cant of social integrity insisted on man-made law dictating who could and could not cohabit, mate, or wed. The growing crusade further implicated law in the most intimate of personal relations and fostered state bureaucracies to police essential elements of personal identity and interpersonal and intergenerational relations.