judge-made law, *Shifting the Blame* posits what its own evidence sometimes tends to refute. If, for example, Goodman truly buys the notion that Shaw’s opinion in *Brown v. Kendall* broke a strict-liability mold, then what is this “central” dialogue on the assignment of tortious fault doing in Cooper’s *The Pioneers* (1823)? In any event, have not Robert Rabin, John Baker, Morris Arnold, Stephen Young, Stephen Gilles, Robert Kaczorowski, and I put to rest the myth of a strict liability regimen in pre-nineteenth-century English (and colonial American) law?

Goodman, drawing on Horwitz’s account, has “jurists and theorists” concocting and applying a “concept of ‘proximate cause’” to address causality issues that had been “rendered obsolete by the intricacy of mechanical causality” (76). But “only one” enlightened theorist, Nicholas St. John Green, eventually drew attention to “the socially manipulative aspect of the theory,” an insight that lay buried for years in Green’s law review essay, however, because it “shook the very foundations of the theory of objective causation on which the law had relied for so long” and thus met “resistance . . . within the legal establishment at the time” (78). This is not quite so: Green was hardly the first to articulate the notion of “foreseeability” as a superior test of causality; it had been employed by as many as a dozen U.S. and English jurists in the century before Green’s essay appeared. Moreover, outside of Francis Wharton’s vitriolic critique of Green, other jurists found its message familiar and comforting, if unremarkable.

*Shifting the Blame*’s shortcomings, then, appear largely to be due to the author’s reliance on a faulty interpretation of what was (and was not) being changed by jurists in nineteenth-century America. Perhaps this indicates that adherents of such a comparative field as Law and Literature ought to be proficient research scholars in both disciplines. At the very least, it demonstrates that one must have a thorough grasp of the scholarly products of the legal historians of one’s period and research domain, aware of all their attendant conflicting findings and contending claims.

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In the summer of 1681, well-to-do white neighbors of Major William Boarman gathered at his Maryland plantation for the wedding of his servant “Irish Nell” Butler and the slave known only as Charles. Although Lord Baltimore, Nell’s former master, had urged her not to make slaves of her children by pursuing this union, the ceremony was performed by a local Catholic priest and attended by well-wishers, and Nell and Charles became accepted in the community as “man and wife” (20). Two hundred years later, Peter Stamps, a married black man in his forties in Georgia’s upper piedmont, was lynched for his relationship with his employer’s daughter, Ida Abercrombie, a thirteen-year-old girl who confessed to
her mother that she was carrying his child. Although her parents did not bring rape charges, perhaps because they realized that the relationship was consensual, a mob of hundreds hanged Stamps "from a bridge railing in the center of town" (180).

These two stories frame Martha Hodes's fascinating study of sexual relationships between white women and black men in the South, bringing into relief her central argument that such relationships were once tolerated by white Southerners and only in the late nineteenth century did they become the target of virulent, violent community reprisals. The primary sources for the many stories she tells are legal records, both trial testimony from colonial and antebellum courts, and appellate reports. For the post–Civil War period, she draws extensively on the records of the American Freedmen's Inquiry Commission, as well as newspapers, anti-lynching pamphlets, and other published sources. Hodes makes excellent use of these legal sources to illuminate the social history of the communities she studies as well as cultural constructions of race; she is not, however, particularly concerned with them as legal sources and does not explore the intersections of race, sexuality, and culture with law. Legal historians will find much that is relevant and interesting about this study, but may wish that she had paid more attention to the legal aspects of her sources and the implications of her findings for legal history.

The book is organized into two sections, the first on the antebellum South and the second on the post–Civil War South. Within the first section, each of four chapters ("Marriage," "Bastardy," "Adultery," "Color") revolves around the story of one relationship told in detail, supplemented with evidence from other, similar stories. Hodes makes no claims about change over time in the antebellum period, in part because her sources are too spotty before 1830, but rather suggests that both the colonial and antebellum periods, through at least 1850, were marked by "toleration" of sex between white women and black men. She carefully and helpfully distinguishes toleration, "a measure of forbearance for that which is not approved," from tolerance, which "implies a liberal spirit toward those of a different mind" (3). It is in the 1850s that Hodes sees the beginning of white hysteria over these relationships; yet even in the cases she retells from the 1850s, she finds relative community acceptance when compared with the post-Civil War years. Overall, her stories are fascinating, her distinctions careful, and her argument persuasive. However, like many cultural histories, this study is subject to the critique that the evidence does not support such a strong statement of her argument. Although she highlights stories of toleration from the antebellum period, she acknowledges that there were also examples of antebellum lynchings; likewise, even by her own reckoning, there were postwar cases of black men’s acquittal for rape and cases in which marginal couples survived without reprisal. This reviewer did not come away convinced that the contrast between the antebellum and postbellum was so, well, black and white.

The most problematic aspect of her argument is Hodes’s characterization of the antebellum South. She is careful to say that whites did not approve of interracial sex, that relationships between black men and white women were always transgressive, but nevertheless, she argues that they did not incite the kind of alarm that would be roused after slavery’s end. Here she directly challenges a number of antebellum historians, including myself, who have found conflict, anxiety, and
alarm over interracial sex, especially as the Civil War approached. (See, for example, Winthrop Jordan, White Over Black: American Attitudes toward the Negro, 1580–1812 [1968]; Peter Bardaglio, “Rape and the Law in the Old South: ‘Calculated to Excite Indignation in Every Heart,’” Journal of Southern History 60 [November 1994]: 749–72; and Ariela J. Gross, “Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South,” Yale Law Journal 108 [1998]: 109–80.) Furthermore, what she interprets as a change in attitudes from early to late nineteenth century could be attributed to the change in legal regime. That is, white alarm about interracial sex was handled through one coercive, violent regime, slavery, in one period, and another coercive, violent regime, lynching, in another. More attention to law would illuminate this better.

Hodes deals most directly with the law in her chapter on “Color.” She explores two inheritance cases, Bryan v. Walton and Franklin v. Hugly, in which Georgia courts sought to determine the racial identity of the offspring of an apparently interracial union. She uses both of these cases to point out the extreme, but apparently peaceful, disagreement among the neighbor-witnesses who testified in court about the racial identity of the individuals at issue and the absence of expressed horror or violent reaction in either case to an alleged illicit relationship between a white woman and a black man. She does not discuss, however, the significance or the consequences of these cases being adjudicated.

The book is strongest in its reinterpretation of Reconstruction politics and the lynching era by showing the “sexualization” of politics—the connections between the “rape myth” and gendered aspects of lynching and the political landscape of the post–Civil War South. Hodes’s rendering of the prehistory of lynching reminds us of the contingency of the historical moment and puts the flesh-and-blood people back into a subject that has been heavily sociologized.

White Women, Black Men is an important, insightful, and beautifully written contribution to the literatures on Reconstruction and the lynching era, the historical construction of racial categories, and the history of sexuality. It is an excellent example of a social and cultural history that uses legal sources but is in no way a legal history.

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As John Phillip Reid explains in his entertaining study of informal legal procedures and assumptions among travelers on the Overland Trail, to “see the elephant” in antebellum America “meant undergoing hardships, to learn the realities of a situation firsthand, or to encounter the unbelievable” (1). Few experiences brought the elephant more to the fore than the challenges posed by transcontinental migration across plains, mountains, and deserts from Missouri to California and Oregon. Yet