Contents

Acknowledgments xi

CHAPTER 1 The Criminal Ban on Miscegenation as a Contested Site 1
Regulating Interracial Intimacy and Building the State: Ninety Years of Bounded Development 3
Antebellum Regulation of Interracial Intimacy 9
State-Level Political Development and the Construction of Identity 12
Alabama as a Significant Site 14
Regulating Interracial Intimacy and the Development of the Supremacist State 22

CHAPTER 2 Creating a Constitutional Order: 1865–82 29
Political and Social Upheaval 30
The Threat of Interracial Relationships 37
Ellis v. State and the Initiation of the Struggle 40
Burns v. State and the Interpretive Challenge 44
Ford, Green, and Hoover: Chipping Away at Burns 48
Pace and Cox v. State and Pace v. Alabama: Constituting the State 58
The New Constitutional Order and the Cornerstones of White Supremacy 65

CHAPTER 3 The Elements of Miscegenation and Its Threat to the Family: 1883–1917 68
Political Consolidation, the Constitution of 1901, and Supremacist Ideology 69
Racial Mixing, White Supremacy, and Violence 74
Evidentiary Considerations and the Elements of Miscegenation 80
The Relationship between Interracial Intimacy and Adultery or Fornication 81
Confessing Miscegenation 87
Establishing Female and Male; Establishing Black and White 91
Inter racial Rape 93
The Constitutionalization and Formalization of White Supremacy 102

CHAPTER 4 Litigating Race: 1918–28 108
Democratic Hegemony in Alabama’s Politics 110
The Birth of a Nation and the Rebirth of the Ku Klux Klan 111
The Triumph of Eugenics and the Threat of Racial Mixing 116
Eugenics as an Opportunity for Black Defendants 121
Metcalf and Rollins: Establishing Whiteness 124
Reed and Wilson: The Debate Expands 128
Weaver v. State and the Effort to Achieve Judicial Resolution 137
The Statutory Redefinition of Race 141
The Battle over Racial Definition: Resolving Heredity with Common Understandings 143

CHAPTER 5 Consolidating and Embedding White Supremacy: 1928–40 148
Politics and Society in Alabama during the Depression 150
Politics and Race in the Late 1920s and 1930s 152
Alabama’s National Scandals: Scottsboro and Hugo Black 155
Jesse Williams and the Continued Struggle over Racial Definition 159
Legitimately Proving the Sexual Act and the Intention behind It: Jackson, Fields, and Murphy 171
Jackson, Fields, and Murphy 171
Bailey and Rogers and the Question of Parallel Outcomes 180
Depression-Era Evidentiary Refinements and the Rationalization of Prejudice 182

CHAPTER 6  White Power and Public Policy in Testamentary Disputes: 1914–44 188
Earlier Doctrine Regarding Interracial Transfers of Wealth 190
Background Legal Principles Governing Challenges to Wills 192
Allen v. Scruggs: Providing for the Children 200
Mathews v. Stroud: The Primacy of the Testator’s Intentions 208
Dees v. Metts: Does Public Policy Prohibit Interracial Inheritance? 210
What about Black Property Owners? 220
Legitimation and White Male Control over Property 223

CHAPTER 7  Portraying the Static State: 1941–54 228
Politics and the Hesitant New Progressivism 229
War and Its Implications 233
Early Stirrings of the Civil Rights Movement 235
Framing Relationships and Avoiding Racialized Debate: Jordan, Brewer, and Gilbert 239
The Necessity of Proving Intercourse: Griffith 247
Agnew and the Court’s Final Word on the Problem of Prejudice and Racial Definition 250
Constitutional Challenges Arise Again: Jackson and Rogers 255
The State Courts’ Final Words on Miscegenation 261

CHAPTER 8  Race and the Legacy of the Supremacist State 266
The Demise of Criminal Sanctions against Interracial Intimacy 267
Alabama’s Final Repudiation of the Formal Ban on Interracial Marriage 275
The Ban on Interracial Intimacy and the Construction of Race and Gender 278
The Ban on Interracial Intimacy and the Process of State Building 287
The Law and Its Agents 295

AFTERWORD  The Analogy between Bans on Interracial Marriage and Same-Sex Marriage—A Usable Past? 300
What Work Can the Analogy Do? 314

Bibliography 319

Index 345