

Introduction

In early June 1958, eighteen-year-old Mildred Delores Jeter and twenty-four-year-old Richard Perry Loving drove from their hometown of Central Point, Virginia, to Washington, D.C. Sweethearts for some six years, Mildred, who was part black and part Cherokee with a light brown complexion, and Richard, who was of English-Irish descent, had decided to get married in the District of Columbia. Once their union was legalized there, they returned home to Central Point and began to build their life together.

The Lovings' matrimonial bliss ended abruptly about five weeks later. During the wee hours of a sultry July morning, three Caroline County police officers entered the Lovings' home through their unlocked front door. Sheriff R. Garnett Brooks and his two deputies found their way into the couple's bedroom, shined a flashlight in their faces, and demanded to know what they were doing in bed together. When Mildred answered, "I'm his wife," and Richard directed the officers to the District of Columbia marriage certificate that hung on the wall, Sheriff Brooks curtly informed them that their marriage was invalid in the State of Virginia.¹ He then arrested the bewildered young couple and hauled them off to jail. There they were charged with having violated Virginia Code 20-54, which prohibited interracial marriage, and Code 20-58, which prohibited "any white person and colored person" from leaving Virginia to evade Code 20-54.²

A few months later in January 1959, a Caroline County grand jury indicted Mildred and Richard for having "unlawfully and feloniously go[ne] out of the State of Virginia, for the purpose of being married, and with the intention of returning to the State of Virginia," and for "cohabiting as man and wife against the peace and dignity of the Commonwealth."³ The Lovings pleaded guilty to the charges, and the Honorable Judge Leon M. Bazile sentenced each to one year in the Caroline County Jail. A compassionate man, the judge suspended the jail sentence, sparing the couple from an experience behind bars and from time away from their new baby boy, born in 1958. But he did so only on the condition that they agree to

leave Virginia and not return together for twenty-five years.⁴ The heart-broken couple, effectively banished from their own state, then went to live with relatives in Washington, D.C.

In 1963, Mildred learned that Congress had begun debating a civil rights bill (which would become the Civil Rights Act of 1964). Hoping that her and Richard's convictions might be challenged as a civil rights issue and that they might be able to return to Virginia with their three children, Sidney, Donald, and Peggy, she wrote to then-U.S. attorney general Robert Kennedy. Kennedy's aides forwarded her letter to the American Civil Liberties Union, and attorney Bernard S. Cohen eagerly agreed to take the case. (ACLU attorney Philip J. Hirschkop joined the case later.) The attorneys filed motions with the Caroline County Circuit Court to vacate the 1959 convictions and sentences, contending that Virginia's antimiscegenation statutes violated the couple's constitutional rights to due process and equal protection.⁵ Fifteen months later in January 1965, Judge Bazile, a lifelong Catholic, reaffirmed the validity of both Virginia antimiscegenation statutes and his original decision and sentence. He concluded his remarks with the following words: "Almighty God created the races white, black, yellow, malay, and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix."⁶ Their motion having thus been denied, Cohen and Hirschkop then appealed to Virginia's highest court, which one year later affirmed the constitutionality of the statutes but deemed the Lovings' sentences "unreasonable." The couple was ordered back to Caroline County to be resentenced.

Meanwhile, Cohen and Hirschkop took the case, aptly named *Loving v. the Commonwealth of Virginia*, to the U.S. Supreme Court.⁷ "Mr. Cohen," Richard Loving implored as the attorneys prepared their arguments, "tell the Court I love my wife, and it is just unfair that I can't live with her in Virginia."⁸ On 12 June 1967, after nine years of fighting for the legality of their marriage, Mildred and Richard Loving at last received the news they had awaited: The Court ruled that Virginia's antimiscegenation laws violated Americans' Fourteenth Amendment rights to due process and equal protection of the law, and that such laws were therefore unconstitutional. Chief Justice Earl Warren delivered the Court's unanimous opinion. "Under our Constitution," he stated, "the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State."⁹ Affirming the civil rather than the religious right to marry, the de-

cision ended the nation's three-hundred-year history of laws prohibiting marriage across the color line. And for perhaps the first time in American history, a federal court held the individual's right to choose a spouse above the state's right to create and enact marriage laws.

In all the years of legal wrangling and media attention in the Loving case, religion appeared explicitly in only two places: in Judge Bazile's now-famous statement about God having created the races, and in an *amicus curiae* brief that a group of Catholic ordinaries filed on behalf of the Lovings. When the case went to the U.S. Supreme Court, a coalition of two Catholic organizations and sixteen Catholic bishops from the South filed the brief, arguing that antimiscegenation laws unconstitutionally restricted the couple's free exercise of religion, insofar as the right to marry was a religious one.¹⁰ In both of these places where religion appears, interesting questions arise. What are the historical origins of Judge Bazile's strange statement about God having "separated the races"? Did it have anything to do with the fact that he was Roman Catholic? How did such a notion make its way into American law? Why did the coalition of Catholics file a brief on behalf of the Lovings, who were Protestant? And more broadly, what do these two instances reveal about the historical relationships between Christianity, race, and marriage law?

On the other side of the continent, about twenty years prior to the U.S. Supreme Court ruling in *Loving*, a young Catholic couple encountered legal obstacles to their marriage in a case that posed similar questions about religion. In 1941, Lockheed Aviation hired Sylvester Davis Jr., a Catholic African American man and graduate of Los Angeles City College. Soon after, he became smitten with Andrea Perez, a brown-skinned woman of Mexican descent who worked with him on the assembly line at Lockheed, and who shared his Catholic faith. After serving overseas in the U.S. Army during the Second World War, Sylvester returned to the City of Angels and asked Andrea to marry him. She happily agreed.¹¹ The couple approached their pastor at St. Patrick's Catholic Church and expressed to him their wish to get married. St. Patrick's was a racially mixed parish, and the priest had encountered such requests before. He knew he had no choice but to give the couple sad news. He informed them that the state of California prohibited marriages between whites and persons of color. Although Andrea did not necessarily identify herself as "white," the priest expected that Sylvester would be categorized as "black" and that their request for a marriage license would thus be denied.

Desperate for a solution that would allow them to marry in the parish,

Andrea and Sylvester then turned to fellow Catholic Daniel Marshall, a prominent Los Angeles civil rights attorney and president of the local Catholic Interracial Council, and a member of their church. In Marshall, they found far more than a sympathetic ear. They obtained the services of a talented lawyer who earnestly desired to help Andrea and Sylvester marry in the church. But even more important, Marshall—a committed integrationist—viewed the prohibitions against interracial marriage as a pet issue. So when Andrea and Sylvester approached him with the problem, he enthusiastically agreed to assist them.

Upon Marshall's counsel, in August 1947 the couple applied for a marriage license with the Los Angeles county clerk Joseph Moroney. As Marshall expected, Moroney took one look at them, designated Andrea as "white" and Sylvester as "Negro," and flatly rejected their application. Marshall then filed a petition with the California Supreme Court, requesting that the court issue an order compelling Moroney to grant the couple a license. A shrewd and skillful thinker, Marshall employed an innovative plan through which to structure his arguments. Rather than disputing the racial identities assigned the couple by Moroney—the approach taken by most attorneys in such cases—he strategically framed his case around the couple's *Catholic* identity. In the Catholic Church, he argued, marriage was a sacrament, and since the church did not bar interracial marriage, California's antimiscegenation laws impeded the couple's ability to participate in this most sacred of Catholic rituals, and thus violated their First Amendment right to practice their religion freely. Andrea Perez and Sylvester Davis waited for one year until the Court handed down its decision in the *Perez v. Lippold* case.¹²

In 1948 the couple received good news. The California Supreme Court declared the state's antimiscegenation laws unconstitutional—the first such ruling in the twentieth century—and Andrea and Sylvester married at St. Patrick's Church a few months later. Although the Court ultimately reached its decision based upon Fourteenth rather than First Amendment considerations, Marshall's choice to structure his argument on First Amendment issues raises many questions about the significance of religion in the *Perez* case. What role did religious freedom play in the right to marry the person of one's choosing, and did it have some special relationship to Catholic belief? As in the Lovings' case, why were Catholics active in advocating on behalf of an interracial couple? Did the Catholic affirmation of the sacramental nature of marriage have some bearing on Catholic views on interracial marriage? Does not the very assertion of Catholic beliefs about

intermarriage imply the existence of non-Catholic views on intermarriage? If so, what might these non-Catholic beliefs be?

Religious Belief and the Right to Marry Interracially

The answers to these questions lie in a long and fascinating history of conflicting religious beliefs about race and marriage, and of interpretations of legal and religious texts and doctrines. Like contemporary same-sex couples, interracial couples of the American past asserted the legitimacy of their relationships, and they fought for the right to marry the person of their choosing in courts often hostile to those rights. Just as the constitutional issues faced by today's same-sex couples in many ways parallel those in antimiscegenation cases, religion similarly played a critical, though far less apparent, role in historical interracial marriage cases.¹³ Interracial couples faced religious censure in American courts just like same-sex couples. Judges pronounced interracial couples' relationships "unnatural" and "evil," deemed such unions "corruptions" of what God had intended for human relationships, and claimed that God had made black and white persons morally and socially unequal and thus unsuitable for marriage. Yet despite the evidence for the strong correlation between religious beliefs and historical attitudes toward intermarriage, no historians or legal scholars have analyzed this issue in a book-length study. Indeed, scholars have given very little attention to the role of religion in American antimiscegenation cases or in the history of interracial marriage more generally.¹⁴ Although historians have recently begun to investigate this topic, they have not yet fully addressed the connections between Christianity and American beliefs about intermarriage.¹⁵ In short, of all the vast historical literature on marriage, interracial marriage, and antimiscegenation cases, very little devotes sustained attention to the ways that religious beliefs influenced American marriage law, antimiscegenation law, conceptions of marriage and race, or attitudes toward intermarriage. And none attempts to compare different types of Christian beliefs about interracial marriage or examine their influences upon antimiscegenation cases.¹⁶

My book, *Almighty God Created the Races*, begins to fill this void in the scholarship on religion and interracial marriage and antimiscegenation law. Contending that the *Perez* and *Loving* cases function as windows into the cultural history of interracial marriage and its legal regulation, I analyze the ways that religious beliefs and regional differences about race and marriage underlie the two cases. Tracing the historical development of reli-

gious ideas about race and marriage requires analysis of a wide variety of historical sources over a long period. I therefore examine Reformation-era writings on marriage; papal encyclicals; nineteenth-century articles from newspapers and religious periodicals; post-Civil War writings by Catholic and Protestant clerics and canon law specialists; the available legal and non-legal documentation of the *Perez* and *Loving* cases; and relevant historical cases on interracial sex and marriage from several state supreme courts and the U.S. Supreme Court. Reading these materials together reveals the connections between Catholic and Protestant beliefs about marriage and race, and between race, religion, and American law. By enhancing our understanding of the means through which religious beliefs constructed American ideas about interracial marriage, we see more clearly the role of religion in *Perez* and *Loving*, in antimiscegenation history, and in the legal regulation of marriage.

A cultural history of law more than a legal history per se, *Almighty God Created the Races* advances the view that Christian beliefs about race and marriage exerted a powerful and enduring ideological influence on anti-miscegenation law and litigation and on American attitudes toward race, intermarriage, and segregation. I contend that there were, in fact, divergent Catholic and Protestant theologies of marriage and race in the United States, and that these established the bases for differences of opinion between Catholics and Protestants over the cultural and religious legitimacy of interracial marriage. The Roman Catholic Church alone affirmed the doctrine of the sacramental nature of marriage—the rite of matrimony as an instrument that conferred divine grace upon the couple. Understanding marriage as a conveyor of sanctification, the church consequently proclaimed sole authority to adjudicate marriage law—and, especially, to oversee legal regulations regarding the formation and dissolution of Christian marriages. More to the point, the church denied the authority of the secular state to determine such laws, particularly after Protestant reformers made this very claim during the sixteenth century. From the Catholic perspective, American bans on interracial marriage could thus be viewed as unwarranted and illicit barriers to otherwise legitimate marriages, particularly for Catholic couples.

I also argue that the Vatican ultimately proclaimed what may be called a theology of race, though it did not fully emerge until the twentieth century—hundreds of years later than its theology of marriage. A response to both religious and nonreligious theories of racial separateness articulated by non-Catholics, and particularly by the Nazi regime, the Catholic

theology of race affirmed the unity of the human family, created by God, united in Christ, and subjected to the universal authority of the holy catholic and apostolic church. Emphasizing common origins in Eve and Adam, the Catholic position implied—at least in theory—racial equality and the acceptance of interracial marriage, as well as the rejection of racial segregation and white supremacy. The Roman Catholic theology of race, together with the sacramental theology of marriage, thus created the theological bases on which Catholics might oppose laws restricting or banning interracial marriage.

Not surprisingly, white American Protestants expressed very different ideas. From the earliest moments of the Reformation, Protestant reformers—in direct contradiction to Catholic doctrine—insisted that marriage was sacred, but not a sacrament. Therefore, since marriage was an earthly rather than heavenly institution, civil rather than ecclesiastical authorities should oversee marriage law. According to this theological view, the state held all responsibility for the legal regulation of marriage, including the determination of impediments that might preclude marriage. These notions dominated American legal conceptions of marriage since early in the formation of the British colonies. And with legal authority thus located, it fell well within the purview of the state to establish legal impediments to marriages between whites and persons of color.

Early in the colonial period, a Protestant theology of race also began to develop as whites made slavery a perpetual, inheritable status for African peoples. Consistent with their belief in the Bible as the authoritative guidebook for all things, white Protestants turned to the Good Book—and especially to the book of Genesis—for answers to questions about racial origins. Increasingly, white American Protestants came to associate Noah's grandson Canaan with Africa and with blackness, which, combined with the fact that in the story of Genesis 9 Noah had cursed Canaan to perpetual enslavement, functioned to create the biblical justification of racial slavery.¹⁷ Though the story of "Noah's curse" remained an important and familiar explanatory paradigm for racial hierarchy after the Civil War, white Americans revised their interpretations of the Genesis stories once the peculiar institution ended and enslaved persons were emancipated. Indeed, following the Civil War, a localized strain of white southern Protestantism emerged that offered an explicitly biblical rationale for racial segregation. These whites asserted that in Genesis 10–11, God had "dispersed" the human races to separate continents, thus demonstrating God's desire for racial groups to remain separate.

Protestant beliefs about the state's right to regulate marriage—combined with the theology of separate races—appeared frequently in post-Civil War antimiscegenation cases. In case after case, white judges reiterated the biblical basis for laws prohibiting interracial marriage, inscribed religious biases against interracial (and particularly, black-white) marriage in American law, and upheld the legalized segregation of whites and blacks more generally. Similar to today's religious rhetoric against same-sex relationships, historical notions of God having created separate and hierarchical races resonated with white Christians, due to their claims that such notions were "biblical." The assertion of the purportedly biblical basis for segregation thus rooted their views in what they understood to be the unchanging authority and will of God.

While the analysis of primary source materials reveals clear distinctions in Catholic and Protestant theologies of marriage and race, it is far too simple to conclude that all white American Protestants expressed hopelessly racist views, or that all white Catholics regarded their black sisters and brothers as equals worthy of respect. Official theological doctrines often do not correspond precisely to the beliefs of the Catholic or Protestant believer sitting in the pew. Yet the Catholic Church's emphasis on racial unity is significant in that it posed a challenge to the white, post-Civil War notion of "separate races," and during the twentieth century, the Catholic theologies of race and marriage contributed to the demise of American antimiscegenation laws and racial segregation at the marriage altar. Correspondingly, courts arguing in favor of antimiscegenation laws proclaimed the "states' right to regulate marriage" as one of the key arguments about the constitutionality of antimiscegenation statutes, though the Protestant origins of this notion had largely disappeared from public view. Likewise, the Protestant theology of separate races, articulated most forcibly among white southerners, found vivid expression following the U.S. Supreme Court's *Brown v. Board of Education* decision of 1954 and provided the religious basis for intense white southern hostility toward desegregation.

Like many other doctrinal differences between Catholics and Protestants, Catholic and Protestant theologies of marriage and race were rooted in historic tensions over ecclesiastical authority and biblical hermeneutics. As we will see, the very issues that divided Catholics and Protestant reformers during the sixteenth century mirrored the differences between Catholics and Protestants over interracial marriage and its legality. Disputes over the appropriate location of spiritual and temporal authority, over the role of the Bible and who possessed the authority to interpret it, and over the nature

of marriage imbued Catholic-Protestant disagreements about marriage and race. Catholic and Protestant beliefs about the church as a universal or local institution also functioned to underscore differences over interracial marriage, for the Catholic emphasis on the universal authority of the church came into sharp relief with Protestant localism, particularly as it developed among white southerners following the Civil War. As historian Mark Noll has noted, most white Protestants “felt free to take up, modify, discard, or transform inherited ideas and institutions as local circumstances dictated.” Their insistence on the Bible as the sole source of spiritual authority, coupled with their freedom to interpret biblical passages differently—according to individual congregations or denominational traditions—thus allowed for the development of local beliefs, such as the theology of “separate races.”¹⁸ While most mid-twentieth-century white southern Catholics were hardly proponents of social equality for their African American neighbors, they would not likely have articulated an explicitly biblical basis for racial inequality.

Several hundred years of doctrinal differences thus shaped the development and outcomes of American Catholic and Protestant thinking on race, marriage, and interracial marriage. Ultimately, a few progressive American Catholics took up the task of eradicating what they perceived as unjust infringements on couples’ religious liberty to marry individuals of another race.

Almighty God Created the Races examines these extraordinarily complex issues by telling a segment of the story of the *Perez* case in each chapter and allowing it to direct our attention to a specific aspect of my analysis. *Perez* exemplifies the conflicts of theological beliefs, constitutional interpretations, and regional values in antimiscegenation cases. By beginning with specific issues of religion in this case and the underlying questions that these issues raise, we follow a path that enables us to discover the many ways that Christian beliefs historically shaped American notions of race and interracial marriage. Indeed, I suggest that it is precisely in the instances where religion does appear in *Perez* and *Loving* that points to the ways that Christianity functioned underneath the surface of antimiscegenation history and—more generally—marriage law.

Each chapter, then, begins with the *Perez* case, highlighting a particular aspect of religion. Chapter 1 explores *Perez* in detail, including the Los Angeles context and the specifically interracial Catholic context of the parish in which Andrea Perez and Sylvester Davis wished to marry, their attorney’s civil rights activism, and his legal strategy. I contend that these

issues affirm the centrality of Catholic Christianity to the *Perez* case, which in turn points to the necessity of considering Catholic and Protestant beliefs together when analyzing other antimiscegenation cases and American attitudes toward interracial marriage. Chapter 2 provides an overview of the historical development of American laws against interracial sex and marriage, highlighting some of the reasons why antimiscegenation laws did not develop in Spanish Catholic regions of the United States. Chapters 3 and 4 examine Catholic and Protestant theologies of marriage and race and their implications for the legal regulation of interracial marriage. Chapter 5 demonstrates how these theologies appeared in nineteenth- and twentieth-century antimiscegenation cases and how they played out regionally. Chapter 6 brings the book full circle by returning to the *Loving* case and offering an explanation for Catholic Judge Leon M. Bazile's famous "Almighty God" statement.