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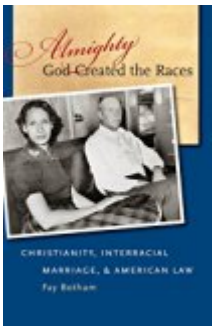

Fay Botham. *Almighty God Created the Races: Christianity, Interracial Marriage, and American Law.* Chapel Hill: University of North Carolina Press, 2009. xiii + 271 pp. $35.00, cloth, ISBN 978-0-8078-3318-6.

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Commissioned by Ethan Zadoff (CUNY Graduate Center)

In 1948, nineteen years before the landmark case *Loving v. Virginia*, the Supreme Court of California issued a decision that struck down the state's antimiscegenation law. In *Perez v. Lippold*, the right to marry across racial lines was argued on grounds very different from those later used before the U.S. Supreme Court in *Loving*. Fay Botham's close analysis of the legal and religious shifts that led from *Perez* to *Loving* makes for fascinating and thought-provoking reading.

Andrea Perez and Sylvester Davis met in 1941 at Lockheed Aviation, where they worked assembling planes to support the war effort. They were both parishioners at St. Patrick's Catholic Church in Los Angeles, a congregation that reflected the multicultural character of the city. Perez and Davis soon fell in love, but when they approached their priest about getting married, he explained sadly that he was barred from blessing the union. Davis was black and Perez (a Latina) was classified by the state as white; California law prohibited such unions.

Perez and Davis turned to Daniel Marshall, a prominent Los Angeles civil rights attorney and a founder of the organization Catholic Interracial Council. Marshall was also a member of St. Patrick's and a leader in the progressive movement in the Catholic Church in Southern California. Marshall eagerly accepted the case, eventually arguing before the California Supreme Court. Rather than raising issues of due process and equal protection (a strategy that would be successful two decades later in *Loving*), Marshall chose to frame his argument in terms of First Amendment rights. Perez and Davis were both faithful Catholics who wished to participate in the sacrament of marriage--one of the seven sacraments (from infant baptism to the last rites) that are an integral part of worshiping in the Roman Catholic faith. By prohibiting their marriage, the state of California was preventing the couple from fully practicing their chosen religion.

It was a novel juridical approach, and one that was not on the face of it successful. Justice Roger Traynor, writing the majority opinion, gave

little weight to the issue of religion. "Justice Traynor," explains Botham, "structured his opinion in *Perez* around the central questions and answers posed by the case: 1) did the right to due process include the freedom to marry, 2) could the state restrict that freedom on the basis of race without violating the equal protection clause, and 3) did antimiscegenation laws aim at preventing a clear and present danger to the state's residents. Religious freedom, then did not even make a 'blip' on Traynor's 'radar screen' in terms of having any real importance to the case" (p. 42).

While Traynor, himself a Catholic, did not address the question of religion, the issue was central to the concurring opinion written by Justice Douglas Edmonds. Justice Edmonds was a Christian Scientist and a fervent supporter of religious freedom. Botham suggests that Marshall may even have fashioned his unusual approach to the case with Edmonds specifically in mind. Justice Edmonds was the swing vote on a split court, and appealing to his religious sentiments may have compelled him to side with the liberal wing in this case.

Botham frames her book with discussions of *Perez* and of *Loving*, but the core of her discussion is an exploration of the very different views of the institution of marriage held by Catholic and Protestant denominations. She traces that divergence to the sixteenth-century Protestant Reformation, where in an attempt to limit the power of Rome, Protestant communities reconceptualized the idea of marriage. On the one hand, "the Roman Catholic Church alone affirmed the doctrine of the sacramental nature of marriage--the rite of matrimony as an instrument that conferred grace upon the couple" (p. 6). Protestants, on the other hand, "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" (p. 7). Even a civil ceremony conducted before a magistrate in a city hall without benefit of clergy could be considered valid.

This non-sacramental view of marriage became firmly established in America through the proliferation of English common law and as a result of the Protestant hegemony in the colonies and in the Early Republic. Moreover, issues surrounding the conditions of or the impediments to marriage were considered unambiguously to fall under the purview of the state, not the federal government. With the rise of race-based laws, the ability to assign an individual to a particular race category became of paramount importance, and miscegenation laws--designed to discourage racial mingling--were adopted throughout the country on a state-by-state basis. Botham's handling of the intricate interweaving of biblical beliefs and legal assumptions is particularly strong.

If there is a weakness to the book it is repetitiveness. Authors are frequently too close to their work and in need of a good editor. Botham presents some of her ideas multiple times, with little variation. Take for example the sentence on page 148: "Moreover, western miscegenation laws tended to classify such violations as misdemeanors, whereas southern states usually deemed intermarriage a felony." On the very next page we read, "western states and territories tended to classify penalties for violations of antimiscegenation laws as misdemeanors, whereas southern states tended to designate such violations as felonies." Her narrative is compelling and her writing is clear and evocative, so these editing flaws are particularly unfortunate.

Botham also misses a great opportunity by giving only a brief overview of the life of Judge Leon M. Bazile. Botham takes the title of her book from Judge Bazile's 1965 circuit court opinion in *Loving v. Virginia*, the case that eventually made its way to the U.S. Supreme Court. "Almighty God created the races," Bazile wrote, "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" (p. 2).

Judge Bazile was a lifelong conservative Catholic, but as a young man he fell in love with a lifelong conservative Baptist, Virginia Hamilton Bowcock. The young couple was a good match in everything but their fervently divergent religious beliefs, a stumbling block that they came to refer to as "Our Problem." Bowcock insisted that her fiancé become deeply informed about the Baptist religion, and the author very plausibly suggests that Bazile's intensive Bible study moved the future judge to a view of moral authority that was heavily scripture based, scripture that was open to individual interpretation--a strikingly un-Catholic stance. Judge Bazile adopted in particular a racist view of interracial marriage, one that he felt was supported by his readings of the Bible. In this, his beliefs ran counter to the contemporary teachings of the Catholic Church, which, in response to Nazi laws forbidding the intermarriage of Aryans and Jews, strongly condemned any suggestion that race should be made an impediment to marriage.

Given that the central issue in *Loving* is whether the state has a compelling interest to forbid the marriage of a man and a woman from divergent groups (and thereby, it was argued, protect their future children from confusion and persecution), Bazile's own marital struggles are more than an interesting biographical detail. Botham writes of the agreement Bazile signed on the eve of his marriage: "He promised to never coerce or interfere with Bowcock's religious practices; to attend church with her 'except on 2nd Sundays and on special occasions'; to allow their children to be taught the catechism, and to not 'coerce them against their will as to religious matters' or require his wife to attend the children's baptism" (p. 164). Botham thus passes perhaps too lightly over what is a significant element in understanding Bazile's attitude toward "mixed marriages."

The document that Bazile signed was written on the letterhead of the Office of the Attorney General of the State of Virginia, but there would also be a corresponding document required by the Catholic Church before Bazile could be married by a priest. Bowcock would have had to sign a similar statement that she would not interfere with Bazile's practice of his religion, that she would seriously consider converting to Catholicism, and that she would agree to raise her children as Catholics. Momentous and life changing concessions would have to be yielded for a Southern Baptist to agree to raise her children in the Roman Catholic Church and for a Catholic to agree to forego Mass on Sunday in favor of a Baptist service. Yet Botham does not take on the question of how Judge Bazile could have encountered Mildred and Richard Loving's case without seeing the parallels with his own difficult courtship.

Throughout the book, Botham makes references to the similarities between the effort to overturn miscegenation laws and the current struggle to end the ban on same-sex marriage, concluding her book with a section titled, "Religious Belief and the Right to Marry a Person of the Same Sex: Lessons from the American History of Interracial Marriage." For anyone involved with the struggle to recognize same-sex marriage, this book should be required reading. The parallels are striking and illuminating.

It's a long road to *Loving*.

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