The Catholic University of America Press
620 Michigan Ave., N.E.
240 Leahy Hall
Washington, DC 20064

U.S. CATHOLIC HISTORIAN

VOLUME 26 NUMBER 4 Fall 2008

Politics

Irish American responses to the war also reveal their own racial hierarchy. While the Irish and Catholic newspapers were outspoken in their defense of the "noble Boer," their silence on the plight of black Africans was deafening.[74] In the three years of the war there is little to no coverage of the conditions of black Africans or their contributions to the war effort. Moreover, although many Irish Americans did not support America's prolonged presence in the Philippines, they never made Emilio Aguinaldo and his band of nationalists from the Philippines into the republican icons that they created with Paul Kruger and the Boers.

Irish American political language was also gendered. Bishop Ryan and Bourke Cockran spoke often of the "manly Boer" and the newspaper editors typically depicted the Boers either as older bearded men or young male soldiers. Women and children were used as victims of British imperialism, particularly in regards to Britain's concentration camps, but it was the "manly virtues" that Irish American leaders believed were needed to rescue them. In fact, the newspaper editors often described the British soldier as effeminate, his pampering and sophisticated lifestyle having eroded the toughness of republican, agrarian living.

Finally, Irish American Catholic politics was transnational. AOH might have had their focus firmly directed at Irish American "respectability" and social advancement in the U.S., but they were still connected to worlds outside their Irish neighborhoods in two ways. First, their position within the British World was significant. Cockran and Ryan were both born in Ireland. They longed for the liberation of Ireland and they felt solidarity with peoples beleaguered by British imperialism throughout the world. Second, Irish Americans were part of an international Church. Cardinal Vaughn's defense of the British had an impact on Catholics' pro-Boer movement in the U.S. Pope Leo XIII's sympathy for the Boers also bolstered their cause. In addition, missionaries with actual experience in South Africa provided them with an education on a people who lived in a distant land. Thus, the South African War provided prominent Irish American Catholics with a unique opportunity to pursue their own agendas for political and social advancement in the U.S. by connecting to worlds beyond their neighborhoods and universal themes of liberty and justice.

74. For more on black experience of the South African War, see Bill Nasson, *Abraham Esau's War: A Black South African War in the Cape, 1899-1902* (Cambridge: Cambridge University Press, 2003).

Tensions Not Unlike that Produced by a Mixed Marriage: Daniel Marshall and Catholic Challenges to Anti-Miscegenation Statutes

Sharon M. Leon

Introduction

On June 12, 2007, in marking the fortieth anniversary of the United States Supreme Court's decision in the *Loving* v. *Virginia* case, which declared anti-miscegenation statutes unconstitutional, National Public Radio's *All Things Considered* ran a piece that was close to thirteen minutes. The story reviewed the circumstances of Richard and Mildred Loving's marriage and their fight to live freely and happily in Virginia. The piece closed with a focus on the continuing challenges for interracial couples in contemporary society.[1] The import of the decision is also visible in the fact that many interracial couples and their friends and family celebrate "Loving Day" on or around June 12 each year.[2] Thus, *Loving* continues to stand out in the national memory as the signifier of racial justice for these couples. However, few people, if anyone aside from Andrea Perez, Sylvester Davis, and their immediate families, remember to mark the date of October 1, 1948 as a significant step forward in the battle for racial justice. But with the sixtieth anniversary of that date, proponents of racial justice and scholars of American Catholic history would do well to focus some attention on Perez and Davis' plea before the California State Supreme Court.

In issuing his ruling in the *Perez v. Lippold* case, Justice Roger Traynor concluded that the California statute, which prohibited state officials from issuing a license "authorizing the marriage of a white person with a Negro, mulatto, Mongolian or a member of the Malay race," violated the Fourteenth Amendment right to equal pro-

1. "Loving Decision: 40 Years of Legal Interracial Unions," *All Things Considered*, National Public Radio (June 12, 2007). Available at http://www.npr.org/templates/story/story.php?storyId=10889047.
2. See, *Loving Day* http://www.lovingday.org/ for more information about these celebrations.

tection under the law.[3] While Justice Traynor's opinion represents a significant step in U.S. jurisprudence, the petitioner's initial arguments regarding the statute are instructive and present an opportunity to examine the intersection of laws circumscribing the right of certain classes of persons to marry and reproduce with the teachings of the Catholic Church. In stating his case for his clients, Daniel Marshall, a long-time activist in the Los Angeles Catholic Interracial Council, argued that since Andrea Perez and Sylvester Davis were both members of the Roman Catholic Church, which maintained no official prohibition against interracial marriages, the California statute constituted a violation of their right of free exercise of religion by preventing them from participating in the sacrament of marriage. This innovative argument suggested that due to its sacramental nature, the rightful jurisdiction over the regulation of marriage rested with the Church and not the state. By so arguing, he placed the Church's canon law in direct confrontation with the state legislative code. In essence, Marshall's position argued that canon law took precedent over the California statute.

Daniel Marshall's argument in the *Perez* case was more than "an end-run strategy," as historian Peggy Pascoe has referred to it.[4] Rather, Marshall's appeal to the Church's jurisdiction over the marriage contract was an attempt to bring an alternative, highly articulated, system of law into direct confrontation with a civil legal code that bolstered Anglo-Protestant hegemony. As a complex and structured system that wielded both an ideology and force of coercion of its own, canon law provided Marshall with a way to resist racialist structures because the Church's code makes no distinction between individuals based on race. Rather, the key emphasis falls on religion.

While Marshall made his argument midway through the twentieth century, a concern over marriage and intrusion of the state's power had been a recurring issue for Catholics to consider for much of the previous thirty years. Though this argument about free exercise has been traditionally overlooked by scholars, an examination of the *Perez* case and its antecedents provides one way to take up historian John McGreevy's call for scholars to analyze "how theological traditions help believers interpret their surroundings."[5] Daniel Marshall's work in the *Perez* case leads us to investigate the analogous relationship between religious and racial difference that is recurrent in Catholic writing about marriage, and the Catholic perspective on the balance of power between church and state in regulating marriage. Placed against the larger backdrop of a shift from a scientific racism to notions of race as a cultural construction during the first half of the twentieth century, these two issues reveal a great deal about the adaptation of Catholicism to American conditions, particularly when those conditions are fraught with institutional racism.

3. *Perez* v. *Lippold*, L.A. 20305, Supreme Court Case Files (California State Archives).

4. Peggy Pascoe, "Miscegenation Law, Court Cases and Ideologies of 'Race' in Twentieth-Century America," *Journal of American History* 83, no. 1 (June 1996): 61.

5. John T. McGreevy, *Parish Boundaries: The Catholic Encounter with Race in the Twentieth-Century Urban North* (Chicago: University of Chicago Press, 1996), 4.

I. Spiritual Miscegenation

In writing about the issue of interracial marriage, John LaFarge, S.J., one of the founders of the Catholic Interracial Councils, showed a marked concern for the stress and hardship that contemporary American social conditions would place on the parties who entered into those unions. In a passage in *The Race Question and the Negro*, he explained, "Racial intermarriage naturally produces a tension in family relations not unlike that tension which is produced by a mixed marriage in the field of religion," which were "subject to a special impediment from the church."[6] Thus, LaFarge highlighted the role of canon law in Catholic considerations of this issue by analogously linking mixed racial marriages with mixed religious marriages. The analogy would make sense to his fellow Catholics, because an examination of U.S. Catholic periodical sources reveals that the "problem" of interfaith marriages proved to be a much more pressing issue than concerns about what Martha Hodes prefers to call marriage "across the color line."[7] Since spiritual matters were the primary concern of the Roman Catholic clergy, there would necessarily be a focus on securing the faith of their coreligionists, and a mixed marriage would bring differences of belief directly into the most intimate of relationships. The *Code of Canon Law* explicitly regulated the conditions under which a Catholic could enter into matrimony with a person outside of the faith. In addition to the regulation of mixed faith marriages, the 1917 *Code of Canon Law* presented impediments based on want of age, impotence, existing bond of marriage, sacred orders and a number of other situations. No such explicit statement existed with regard to mixed racial marriages.[8]

During the height of the second wave of immigration in the United States, Catholics were acutely concerned about new immigrants leaving the Church as they adjusted to American conditions—a problem commonly referred to as "leakage."

6. John LaFarge, S.J., *The Race Question and the Negro* (New York: Longmans, Green and Co., 1943), 196.

7. Martha Hodes, "Introduction: Interconnecting and Diverging Narratives," in *Sex, Love, Race: Crossing Boundaries in North American History*, ed. by Martha Hodes (New York: New York University Press, 1999), 1-9.

8. Of the impediments to marriage recognized by the Church, one of the most common was that of marriage between a Catholic and a non-Catholic. The *Code of Canon Law* established two types of impediments for these marriages, depending on whether or not the non-Catholic partner had been baptized. If that partner was unbaptized (a Jew, a Muslim, a Hindu, etc.) there was a *diriment* impediment rendering the potential marriage invalid. If that partner had been baptized (a Protestant), then there was an *impedient* impediment rendering the marriage valid, but gravely sinful. Though this teaching on marriage traced back to the Apostolic period, it had undergone a number of slight alternations, and by the nineteenth century, Catholic bishops, including those in America, were allowed to issue a dispensation from the impediment on the condition that the priest secured a written promise that the Catholic party would be free to practice his or her faith and that he or she would see to it that the children would be raised and educated as Catholics. For more information see T. Lincoln Bouscaren, S.J., and Adam C. Ellis, S.J., *Canon Law: A Text and Commentary* (Milwaukee, Wisc.: The Bruce Publishing Company, 1946), 455-496; Stanislaus Woywood, O.F.M., LL.B., "Canon Law Studies: Marriages between Catholics and Non-Catholics," *The Homiletic and Pastoral Review* 40 (February 1940), 409-419; *Idem*, "Marriage Impediment of Mixed Religion," *The Homiletic and Pastoral Review* 40 (March 1940), 633-643; and *Idem*, "Marriage of Catholics to Unbaptized Persons," *The Homiletic and Pastoral Review* 40 (April 1940): 756-766.

Although Roman Catholicism had been the largest single Christian denomination in the United States since the 1850s, in real numbers Protestants overwhelmed Catholics. Subsequently, the clergy were particularly haunted by the problem of "leakage" due to the presence of Protestant settlement houses and social services. This period of transition and flux prompted investigations such as Gerald Shaughnessy's *Has the Immigrant Kept the Faith?* (1925). However, after the dramatic reduction of immigration by the end of the 1920s, the focus shifted to interfaith marriage as the cause of individuals leaving the Church. For instance, working from a variety of sources and estimates, in 1934 Peter Bernarding estimated that of those persons involved in mixed marriages, 38% or 79,800 persons failed to make their "Easter duty," hence rendering them "lost to the Church." Furthermore, Bernarding explained, "My constant endeavor in making this estimate has been to underestimate rather than to overestimate; so that I think it safe to set down our annual losses from this source as being in the neighborhood of 100,000 souls." If that rate remained constant, the loss would be close to 1.5 million people by the time the *Perez* case came up in 1948.[9]

The language of racial difference sometimes haunted these meditations on interreligious marriage. For example, in a 1931 article littered with phrases like "color line," "mixed marriages," and "miscegenation," Joseph Donovan discussed the problem of the "invasion of Catholic life by the unregulated marriages of Catholics to non-Catholics." Entitled "Keeping back the Color Line," the article was not a treatise on the changing racial dynamics of America's urban centers, but rather a meditation on what Donovan termed "spiritual miscegenation." Novelist and literary scholar, Toni Morrison has convincingly argued that "blackness" is the dominant metaphor for difference in the American mind, and Donovan's article is one example that bears out her theory. The notion that interracial marriages were dangerous and negative was so pervasive in American life that he could most effectively express his concern and distress about religious difference in marriage by invoking the specter of racial mixing.[10]

By turning to the language of race to express his fears about interreligious marriage, Donovan points out the degree to which notions of racial hierarchy are tied to thinking about marriage. Statutes regulating intimate relations between whites and non-whites have been part of the fabric of the American legal system since colonial times. In the wake of the Civil War, African Americans rushed to regularlize their marriages in the eyes of the state, responding to the decades during which slaves were unable to contract marriages. Evidence suggest that both African Americans and whites were generally resistant to interracial marriages during this time and as white

9. Peter Bernarding, A.M., S.T.B., "Catholic Losses through Mixed Marriages," *The Homiletic and Pastoral Review* 34 (September 1934): 1267-1272, and *Idem*, "Mixed Marriages: Preventatives and Curatives," *The Homiletic and Pastoral Review* 35 (October 1934): 52-58.

10. Joseph P. Donovan, C.M., J.C.D., "Keeping Back the Color Line," *The Homiletic and Pastoral Review* 31 (May 1931): 812; Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (New York: Vintage Books, 1992).

men had limited access to black women, miscegenation decreased considerably. As Reconstruction gave way to disenfranchisement and Jim Crow, the complex of laws circumscribing African American lives, anti-miscegenation statutes took up a prominent place in that legal structure.[11] Progressively, these statutes used the language of blood to define "negroes" as any person who had any African ancestry at all. The so-called "one drop rule" worked to produce the appearance of an impenetrable wall of separation between whites and people of color. In the realm of anti-miscegenation statutes, the Virginia Racial Integrity Act of 1924 became the most famous. Passed in conjunction with the Virginia Sterilization Act, the Racial Integrity Act called for the state registrar of vital statistics to ascertain the racial composition of every resident of the Commonwealth who wished to contract a marriage, and any other person who desired to register. Based on that certificate of racial composition, it was then "unlawful for any white person in this State to marry any save a white person, or a person with no other admixture of blood than white and American Indian." The stated exception for American Indian blood was to allow for one-sixteenth or less admixture in honor of the descendants of Pocahontas.[12]

As the Virginia case suggests, those concerned with preserving white racial supremacy were also concerned with taking steps to improve the race such as advocating sterilization for the "unfit." Coalescing in the eugenics movement that was increasingly popular after the turn of the century, these individuals looked to science to improve the race by encouraging the "fit" to reproduce, while discouraging the "unfit" from reproducing. Under the leadership of activists such as Charles Davenport and Harry Laughlin, the founders of the Cold Spring Harbor Station for Experimental Evolution and the Eugenics Record Office, the movement succeeded in winning enough popular support to put forth a legislative agenda that included immigration restriction, forced sterilization, and a host of marriage regulations. Institutionalized after World War I in the American Eugenics Society (A.E.S.), the eugenics advocates faced no stronger opponent than Catholic activists—both clergy and laypersons—who routinely lobbied state legislatures, and spoke out against eugenic statutes.[13]

11. Joel Williamson, *New People: Miscegenation and Mulattoes in the United States* (Baton Rouge: Louisiana State Press, 1995), 91-109.

12. "The Racial Integrity Act," Commonwealth of Virgina, [S.B. 219], passed March 20, 1924. For more on the Racial Integrity Act, see: Barbara Bair, "Remapping the Black/White Body: Sexuality, Nationalism, and Biracial Antimiscegenation Activism in 1920s Virginia," in *Sex, Race, Love: Crossing Boundaries in North American History*, ed. by Martha Hodes (New York: New York University Press, 1999), 399-422; and Richard B. Sherman, "'The Last Stand': the Fight for Racial Integrity in Virginia in the 1920s," *The Journal of Southern History* 54, no. 1 (1988): 69-92.

13. See Sharon M. Leon, "Beyond Birth Control: Catholic Responses to the Eugenics Movement in the United States, 1900-1950" (Ph.D. dissertation, University of Minnesota, 2004). On the American eugenics movement, see Mark H. Haller, *Eugenics: Hereditarian Attitudes in American Thought* (New Brunswick, N.J.: Rutgers University Press, 1963); Daniel J. Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity* (Berkeley: University of California Press, 1985) and Diane B. Paul, *Controlling Human Heredity, 1865 to the Present* (Amherst, N.Y.: Humanity Books, 1998).

Despite this consistent opposition, the A.E.S. pursued a broad-based agenda that included support for anti-miscegenation statutes. For example, Davenport corresponded with W.A. Plecker, one of the chief proponents of the Racial Integrity Act, both before and after the act's passage in 1924, although he declined to offer assistance in the administration of the law. Additionally, on several occasions members of the A.E.S. leadership, such as Madison Grant, discussed various anti-miscegenation statutes and their enforcement.[14] Similarly, Davenport crafted an extremely favorable review of Earnest Sevier Cox's book, *White America*, which argues that the United States was in a state of racial deterioration that could only be halted by the mass migration of blacks back to Africa.[15] In the review, Charles Davenport extolled not only Cox's book, but also the author himself, who also was instrumental in securing the passage of Virginia's 1924 anti-miscegenation statute. Davenport gushed, "America is still worth saving for the white race and it can be done. If Mr. E.S. Cox can bring it about he will be a greater savior of his country than George Washington. We wish him, his book and his 'White America Society' godspeed."[16] Davenport's thinking can be taken as representative of the leadership of organized eugenics.

The authors and editors of the eugenics press expressed a good deal of curiosity at the ways Catholics approached questions of racial difference and religious difference. For example, in discussing eugenics in South America in 1922 Reginald Harris, a eugenics field worker, explained the reasons for a lack of prejudice based on skin color: "It is probably that there are no deep-lying national prejudices against colored skin among the Portuguese and Spanish. On the other hand, the religious barrier against interbreeding is certainly much stronger among Latins than among Teutons. When, however, the religious hindrance is removed, when Indian and Negro became confirmed in the Catholic faith, then they are of one body with the Caucasian Catholics."[17] Harris' observations in *Eugenics News* pointed out that ideally acceptance of the Catholic faith and teachings made all other differences of race and ethnicity meaningless. More important, however, is the fact that Harris interpreted this unity achieved through conversion as reflecting negatively on the Catholic understanding of race, biology and society.[18]

14. W.A. Plecker folder in the Charles Davenport Papers and Folder #1 and #2 (1925-1935) of the Minutes (1925-1956) for the American Eugenics Society collection, both housed at the American Philosophical Society, Philadelphia, Pennsylvania.

15. *White America* continues to be a favorite with American white supremacists, and has achieved renewed prominence with the Obama candidacy for president. Tom Metzger, leader of the White Aryan Resistance, apparently recommends it as part of "well rounded racial education." See "White America by Earnest Sevier Cox," *Access St. Louis!* (August 28, 2008) <http://accessstlouis.blogspot.com/2008/08/white-america-by-earnest-sevier-cox.html>.

16. "White America," *Eugenical News* 9, no. 1 (January 1924): 3. A copy of the review is also located in the Davenport Papers.

17. Reginald G. Harris, "Eugenics in South America," *Eugenical News* 7, no. 3 (March 1922): 29-30.

18. While Harris' article referred to the ways that South Americans understood skin color and racial hierarchy, the work of Nancy Leys Stepan demonstrates that within Latin America, a "softer" eugenics prevailed that than which took hold in the United States, England and Northern Europe. She attributes this difference both to cultural ties with France, where neo-Lamarckian thought held some sway, and to religious (Catholic) objections to human sterilization. See Nancy Stepan, *"The Hour of Eugenics": Race, Gender, and Nation in Latin America* (Ithaca, N.Y.: Cornell University Press, 1991).

Certainly, Catholic thinking about race was not uniform, and scholars have documented the tremendous tensions that existed between ethnic Catholics and African Americans. But, at the same time, Catholics did not approach questions of race in the same way that their non-Catholic neighbors did. In addition to the lessons presented by the everyday lived experiences of the diverse American Catholic population, the Church's teaching maintained that Catholics were united through their commitment to a common faith and a sacramental theology, regardless of racial and ethnic differences. Dealing with tremendous diversity due to the immigration of the nineteenth century, Catholic bishops allowed the establishment of national parishes that recognized the authenticity of distinct and traditional styles of worship and that worked to preserve the ethnicity of immigrants. This is not to say that there were not serious instances of conflict amongst ethnic groups in Catholic urban centers, but the establishment of national parishes theoretically accommodated difference more than they discouraged it. This unity through faith and ritual extended not only to the new immigrants, but also to the small numbers of professing African American Catholics.[19]

II. A Sacred Power

Miscegenation statutes dealt with the question of racial difference and hierarchy through regulating access to marriage. For Catholics, the question of who had appropriate jurisdiction over the marriage union, the church or the state, was a significant one due to the status of marriage as a sacrament. However, this question fell into stark relief with Pope Pius XI's 1930 encyclical, *Casti Connubii*. The encyclical reiterated Catholic teaching on marriage, emphasizing the Church's opposition to artificial birth control, eugenic sterilization, divorce, free love, and trial marriages. In the letter, Pius XI restated canon law's position on interfaith marriages. All of these teachings on marriage and reproduction were based on the Church's claim to sole jurisdiction over the marriage contract. Due to the sacred nature of the union, the state could rightfully legislate the civil effects of marriage, such as inheritance, but only the Church held the authority to dispense impediments to marriage.[20]

Emphasizing the role of the state as protector, the encyclical also counseled against the ways in which the state might overstep its bounds by interfering with marriage. The letter condemned eugenics legislation that would prevent persons from

19. The key texts on these complicated issues are as follows: R. Emmett Curran, "Splendid Poverty: Jesuit Slave-Holding in Maryland, 1805-1838," in Randall Miller and Jon Waklyn, eds., *Catholics in the Old South: Essays in Church and Culture* (Macon, Ga.: Mercer University Press, 1983), 125-146; Cyprian Davis, *The History of Black Catholics in the United States* (New York: Crossroads, 1990); John T. McGreevy, *Parish Boundaries: The Catholic Encounter with Race in the Twentieth-Century Urban North* (Chicago: University of Chicago Press, 1996); and David W. Southern, *John LaFarge and the Limits of Catholic Interracialism, 1911-1963* (Baton Rouge: Louisiana State University Press, 1996).

20. Pius XI, "*Casti Connubii*," in *The Papal Encyclicals, 1903-1939, Volume III*, ed. by Claudia Carlen, IHM (Pierian Press, 1990), 391-414.

marrying due to the possibility that they might produce defective offspring. The letter also condemned legislation that would forcibly "deprive these [persons] of that natural faculty by medical action despite their unwillingness." Significantly, in discussing these measures, the encyclical critically singled out those "who over solicitous for the cause of eugenics, not only give salutary counsel for more certainly procuring the strength and health of the future child—which, indeed, is not contrary to right reason—but put eugenics before aims of a higher order," and wish to promote prohibitive legislation.[21] Rather than condemning the goal of promoting healthy children through voluntary positive measures, the encyclical only speaks out against invasive negative policies. The letter favors the power of persuasion over the use of force in the promotion of healthy offspring. Hence, the letter explains that "[a]lthough often these individuals [those predisposed to have "defective" offspring] are to be dissuaded from entering into matrimony, certainly it is wrong to brand men with the stigma of crime because they contract marriage, on the ground that, despite the fact that they are in every respect capable of matrimony, they will give birth only to defective children, even though they use all care and diligence."[22] The message here is that hereditary characteristics cannot be construed as active choices for which an individual can and should be held responsible. Since heredity exists outside the realm of free will and responsible decision making, the state should not have the power to disadvantage an individual or restrict that person's rights on that basis.

The teachings articulated in *Casti Connubii* represent one element of the struggle for authority that marked the Church's relationship with modern nations in the nineteenth and twentieth centuries. Though individuals might be citizens of particular political entities, their rights and responsibilities derived from their personhood, not their political status. Thus, as a basic union of individual persons, marriage was subject to natural law more so than civil law. Viewing itself as the logical interpreter of natural law, the Church spoke on marriage in an effort to reclaim the sacramental union from the corruption of modernity.

The significance of this stance was not lost on Protestant observers. For instance, the editors of *The Christian Century* remarked, "The practical effect of the Catholic doctrine is to bring marriage wholly under the control of the church—that is, of an unmarried priesthood. To control the institution of marriage and all that is related to it is to control the human race—its perpetuation, its education, its most intimate interests. No wonder the church wishes to control it!"[23] Along with this assessment, the editors speculated that perhaps the assurances from Catholics during Al Smith's presidential campaign of his complete independence and autonomy in matters of the state may have been somewhat disingenuous. They clearly viewed the Church's position as a dictatorial interference both with freedom of individual thought and with the legislative jurisdiction of the state. Needless to say, the Catholic position of ceding the

21. *Casti Connubii*, 401 (paragraph 68).
22. Ibid., 401–402 (paragraph 69).
23. "Rome Has Spoken!" *The Christian Century* 48 (February 4, 1931): 158.

state authority only over matters such as licensing and inheritance guaranteed that there would be a good deal of debate over which public policy initiatives constituted an overstepping of civil authority.

The example that makes this debate most clear is the conversation surrounding "social disease legislation." Unlike anti-miscegenation codes, these eugenically inspired laws called for individuals to present a certificate stating that they were free from sexually transmitted diseases and other "defects" before the state would grant them a marriage license. While infected individuals would not be granted a license, if they could present an affirmative certificate signed by a physician at a later date, the state would officially recognize the marriage. Therein lay the rub for Catholics: Was this legislation creating a civil impediment to marriage, or was it merely a delay in the interest of public health? Discussing a 1938 New York state regulation Paul Blakely, S.J., an editor of the Jesuit journal *America*, argued that the statute called for a justifiable delay to marriage that protected the public good rather than creating an impediment.[24] Others disagreed with Blakely's position on whether or not the state was overstepping its jurisdiction. Theologian Francis J. Connell, C.SS.R., refuted Blakely's position based on the fact that the Church claimed sole authority to regulate the marriage contract. Connell instructed readers that "since the Church has not legislated that social disease prevents a baptized person from contracting a valid and lawful marriage, Catholics must hold that there is no human legislation binding in conscience which directly prohibits a baptized person so afflicted from marrying."[25]

Connell's position is instructive. With regard to canon law, he allowed for a very narrow interpretation of the text. He followed the letter of the law and tended to be suspicious of that which fell outside of the elements delineated in that law, particularly in instances that involved a conflict between church and state over jurisdiction. In Connell's opinion, social disease legislation and compulsory blood tests represented an attempt on the part of the state to legislate moral issues. He instructed his readers:

24. Paul Blakely, S.J. "Social Diseases and Legislation for Marriage," *America* (July 2, 1938): 295. Blakely's article also included a common confusion that was key to the success of many eugenic policy initiatives. In stating that "[t]he disease can be inherited" Blakely made a significant mistake that one of his fellow Jesuits keenly pointed out in a subsequent issue: disease cannot be inherited; fetuses can be infected in utero, causing an environmental transmission rather than a hereditary taint. [Robert C. Graham, S.J. "Correspondence: Marriage Legislation," *America* (July 16, 1938): 354.] Blakely responded that he "used the term in its popular, not biological, sense," a misstep for which he considered himself "censurable." [Paul L. Blakely, S.J. "Correspondence: Marriage Legislation," *America* (July 23, 1938): 377.]

25. Additionally, Connell was quite concerned about the eugenic origins of social disease legislation and the subsequent dangers of abuse. Urging Catholics to assume a critical stance toward marriage license laws, he counseled that "to avoid civil penalties, baptized persons will prudently observe the laws of the localities in which they reside. At the same time it is well for Catholics to be familiar with the teachings of their Church on this matter, and to be alert to the danger which this present legislation may be only the opening wedge—the danger of legalized sterilization. The use of moral means, that is legislation, to prevent diseased persons from procreating may easily lead to the use of physical means." Francis J. Connell, C.Ss.R., "Correspondence: Marriage Legislation," *America* (July 16, 1938): 354.

> It is imperative therefore that Catholics be alive to the situation and realize that the civil government is now arrogating to itself a sacred power that Christ wished to be exercised solely by His Church, and that in passing eugenic legislation binding on the baptized the state is going beyond its lawful sphere just as truly as if it legislated as to who should be admitted and who should not be admitted to Holy Communion.[26]

Connell was never one to mince words when he thought the integrity of the Church was in danger. Despite the fact that he seemed utterly convinced that his position was indisputable, the debate over social disease legislation continued into the 1940s in Catholic periodicals.[27]

III. Prudence

In his insightful work on the legal construction of race, *White by Law*, Ian Haney López emphasizes the role of law in structuring society. He argues that "[l]aw is one of the most powerful mechanisms by which any society creates, defines and regulates itself."[28] This emphasis on the role of law within American society leads him to conclude that in the construction of race, law functions both as coercion and as ideology. It constrains action "through the promulgation and enforcement of rules that determine permissible behavior" and limits cognitive possibility by defining, "while seeming only to reflect, a host of social relations, from class to gender, from race to sexual identity."[29] Anti-miscegenation cases performed both of these functions by regulating the marriage contract and by issuing definitive statement on racial categorization. In this way, they contributed to the effort to shore up white supremacy.

The initial prohibition against miscegenous marriages in California arose in 1850 and it accompanied a statute that prevented African Americans or "mulattoes" from testifying for or against white persons in a court of law. Quickly thereafter, in 1854, the law was amended to exclude the testimony of Chinese persons. The initial language was succeeded by Civil Code 60 in 1872, which prohibited the marriage of white persons with "negroes" or "mulattoes." The law was then amended in 1901 to exclude "Mongolians" and in 1933 to exclude members of the "Malay

26. Francis J. Connell, C.Ss.R. "May the State Forbid Marriage Because of Social Disease?" *The Ecclesiastical Review* 49, no. 6 (December 1938): 517.

27. See Thomas Vernor Moore, O.S.B. "Marriage and Venereal Infection: I." *Ecclesiastical Review* 50, no. 4 (April 1939): 323-331; Francis J. Connell, C.Ss.R., "Marriage and Venereal Infection: II." *Ecclesiastical Review* 50, no. 4 (April 1939): 331-334; Francis J. Connell, C.Ss.R., "State Legislation on Venereal Diseases," *Ecclesiastical Review* 50, no. 5 (May 1939): 445-446; Francis B. Donnelly, S.T.L., "Compulsory Blood Tests Before Marriage: I." *Ecclesiastical Review* 51, no. 1 (July 1939): 9-21; Francis J. Connell, C.Ss.R. "Compulsory Blood Tests Before Marriage: II." *Ecclesiastical Review* 51, no. 1 (July 1939): 21-30; Thomas Vernor Moore, O.S.B., "The Marriage of Persons Infected with Venereal Disease: I." *Ecclesiastical Review* 53, no. 1 (July 1940): 27-53; and Francis J. Connell, C.Ss.R., "The Marriage of Persons Infected with Venereal Disease: II." *Ecclesiastical Review* 53, no. 1 (July 1940): 54-59.

28. Ian F. Haney López, *White by Law: the Legal Construction of Race* (New York: New York University Press, 1996), 9-10.

29. *Ibid.*, 121, 124.

race." Hence, when challenged in 1948, the law stating, "All marriages of white persons with negroes, Mongolians, members of the Malay race, or mulattoes are illegal and void," contained within it much of the history of Californian xenophobia and racial exclusion.[30]

Given the difference that Catholic theology made in shaping perspectives on race, it is not surprising that as the understanding of race as a biological fact began to give way to the notion of race as a cultural construction in the 1940s, individual Catholics showed signs of chaffing under the strictures of the marriage restrictions. For instance, *Commonweal*, carried a story in 1945 by Iris Buaken, a non-Catholic married to a Filipino man, that detailed the plight of Filipinos in California who resisted the anti-miscegenation statute during the war with the help of the Catholic chaplain of the First Filipino Infantry of the U.S. Army. Unable to convince the California state legislature to alter its marriage laws, Chaplain Eugene Noury, the Red Cross worker assigned to the unit, and Colonel Robert H. Offley made arrangements for the Filipino servicemen and their brides to travel to New Mexico where they were officially married before they embarked on their mission in April 1944. Formalizing these marriages entitled the servicemen's families to sufficient allowances while they were away. Buaken's story was followed by a digest of marriage laws in western states, and an editorial note on canon law. The editors maintained that anti-miscegenation legislation was "in direct conflict with Canon Law." Hence, "a priest is in conscience obliged to fulfill his function as official and principal witness of such a marriage—in other words, he must 'perform' the marriage."[31]

By 1948, thirty states had laws prohibiting the marriage of white persons to non-white persons under various standards of definition. In the eyes of those well-versed in Catholic teaching, these laws should have seemed highly objectionable, and would seem to evoke the kind of response that appeared following Buaken's article. When Andrea Perez and Sylvester Davis approached attorney and Catholic interracial activist, Daniel Marshall, asking him to help them get married, Marshall could not simply accept the prevailing social conditions as an excuse for unjust laws. Hence, he took up the *Perez* case as a chance to challenge the constitutionality of anti-miscegenation codes from the basis of his beliefs as a Catholic. As an activist in the Los Angeles Catholic Interracial Council, Marshall took up the push that Jesuits John LaFarge and William Markoe had begun in the 1930s when they turned the focus of activism on behalf of African American Catholics toward a broader focus on interracial justice, unity and integration.[32]

As historian David Southern has noted, many Catholic interracialists were reluctant to broach the topic of interracial marriage because it was such a sensitive topic that could produce a backlash against work for racial justice in other social and eco-

30. Roger Traynor, "Majority Opinion," *Perez* v. *Lippold* (L.A. 20305), 1-2, 10.

31. Iris B. Buaken, "You Can't Marry a Filipino: Not if You Live in California," *Commonweal* (March 16, 1945): 537.

32. McGreevy, *Parish Boundaries*, 38-47.

nomic realms.[33] Marshall, however, saw a chance to directly pose the teaching of the Church against the system of racial oppression. One of the first steps Marshall took was to write to the Auxiliary Bishop of Los Angeles seeking support for the action. In an April letter, Marshall explained to Bishop Joseph T. McGucken:

> The issue of religious liberty will be raised by allegations and evidence that the dogma of the Roman Catholic Church is as follows:
>
> 1. Jesus Christ is the founder of the Roman Catholic Church;
> 2. Marriage, validly contracted and consummated, between baptized persons is a sacrament instituted by Jesus Christ;
> 3. There is no law of the Catholic Church which forbids the intermarriage of a non-white person and a white person;
> 4. The Church recognizes the right of the State to legislate in certain respects concerning marriage, on account of its civil effects; e.g., alimony, inheritance and other like matters. When the State enacts laws inimical to the marriage laws of the Church, practically denying her right to protect the sacred character of marriage, she cannot allow her children to submit to such enactments. She respects the requirements of the State for the marriages of its citizen as long as they are in keeping with the dignity and Divine purpose of marriage;
> 5. The Church has condemned the proposition that "it is imperative at all costs to preserve and promote racial vigor and the purity of the blood; whatever is conducive to this end is by that very fact honorable and permissible."

Then, he asked the auxiliary bishop if he would meet with Perez and Sylvester to ascertain their readiness for marriage, and if he would testify in court in support of those elements of dogma that were essential to the case. Marshall must have been disappointed, if not surprised, by the response he received from McGucken. The bishop sent off a quick note of reply, in which he chided Marshall for his presumptuousness, counseling: "I cannot think of any point in existing race relationships that will stir up more passion and prejudice than the issue you are raising. I doubt seriously the possibility of getting a balanced judgment in this matter, and I would advise you to consult with some older heads before attempting this issue, particularly since you are planning to involve the Church in it."[34] Despite McGucken's less than enthusiastic response, Marshall moved ahead with the suit, filing in the original jurisdiction of the California State Supreme Court.

In responding to Marshall's brief, the state attorney raised John LaFarge's work in *The Race Question and the Negro* in an effort to refute Marshall's claims about Church teaching on interracial marriage. In that text, LaFarge counseled: "where such

33. David W. Southern, "But Think of the Kids: Catholic Interracialists and the Great American Taboo of Race Mixing," *U.S. Catholic Historian* 16, no. 3 (Summer 1998): 67-93.

34. Copy of Letter from Daniel Marshall to Most Reverend Joseph T. McGucken (April 23, 1947), and Copy of Letter from McGucken to Marshall (April 26, 1947), John LaFarge Papers (Box 17, Folder 29, Daniel Marshall Correspondence, 1947-1950), Special Collections, Georgetown University Library.

intermarriages are prohibited by law, as they are in several States of the Union, the Church bids her ministers to respect these laws, and to do all that is in their power to dissuade persons from entering into such unions."[35] Far from a call for civil disobedience, LaFarge's message suggested that the disparity of conditions occasioned by racial difference would be so great that it would endanger the unity of the marriage bond so much that an interracial union would simply not be "prudent," and that social and cultural conditions changed ever so slowly, leaving people with little choice but to accept them in the meantime. From this perspective, LaFarge modeled the paradigm of racial thinking emerging from cultural anthropologists, which viewed racial categories as having no objective biological foundation, but accepted social and cultural differences as the basis for those distinctions.[36]

Though Marshall did not believe that the cited passage counseling priests to respect existing laws had any bearing on his claims, he requested LaFarge's comment.[37] As a result, LaFarge had a chance to clarify a position in private correspondence that he did not forcefully take in his public writings: "Respecting the laws does not mean that one approves of the laws or considers them either just or equitable." LaFarge told Marshall that if the social consequences of the marriage had been fully considered, then the Catholic Church would have no objection. There was no impediment to interracial marriage in canon law, unlike those impediments placed against "marriage with people of different religions or within the forbidden degrees of relationship." He went on to explain,

> Since the exercise of prudence is something which falls entirely within the competence of the contracting parties, it is altogether improper and immoral for the State to lay down a regulation upon a matter over which it has no competence. While prudence may be dictated to individuals as the more desirable course, that of complying with an unjust law under certain circumstances, changed circumstances such as the world is now engaged in would seem to make it equally the part of prudence to see that such laws are done away with and to register a protest against them.[38]

In this way, LaFarge expressed his support for Marshall's venture—support that he offered again in subsequent correspondence.[39] Hence, Marshall was not discouraged by the state's use of LaFarge's work.

In crafting his response to the state's reply brief, Marshall brought to bear an abundance of the available judicial, biological and sociological evidence to refute

35. John LaFarge, S.J. *The Race Question and the Negro*, 195-198. Quote from 195. *The Race Question and the Negro* was the second edition of LaFarge's Interracial Justice (New York: 1937).

36. Matthew Frye Jacobson provides an insightful account of this shift from biological determinism to cultural determinism in the second quarter of the twentieth century in his text. *Whiteness of a Different Culture: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1998), 96-109. See also Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America."

37. Marshall to LaFarge (September 19, 1947), LaFarge Papers.

38. LaFarge to Marshall (September 26, 1947), LaFarge Papers.

39. LaFarge to Marshall (November 24, 1947), LaFarge Papers.

the claims of reasonableness for the anti-miscegenation statute. Drawing on a variety of court rulings, Marshall sought to argue that mixed marriages did not represent a clear and present danger to the state that would be necessary to justify the abrogation of the natural right of persons to marriage or to the free exercise of religion. Since the issue had never come before the California Supreme Court, or the United States Supreme Court, the state's brief pointed to several state and federal rulings. In analyzing the cases cited by the state, Marshall argued that the decisions represented the codification of racial prejudice and the unfounded assumptions about "inferiority." Marshall skillfully pointed to the ways in which the rulings, and the state's use of them, worked only to uphold the ideology of white supremacy. He included an extended quotation from the ruling of a 1890 federal case in Georgia, to make his point:

> The amalgamation of the races is not only unnatural, but it is always productive of deplorable results. Our daily observations show us that the offspring of these unnatural connections are generally sickly and effeminate, and that they are inferior in physical development, and strength to the full blood of either race. It is sometimes urged that such marriages should be encouraged for the purpose of elevating the inferior race. The reply is that such connections never elevate the inferior race to the position of the superior, but they bring down the superior to that of the inferior. They are productive of evil, and evil only, without any corresponding good.[40]

He capped this argument with an extended quote from *Mein Kampf* that mirrored much of the language available in the rulings from the state and federal courts. Explaining the parallel, Marshall charged California with pursuing the purity of the "blood of the so-called white race" at all costs.[41] In doing so, he leveled a powerful charge of overt racism at the state.

He then moved on to answer the state's claims of biological justification for the statute, which reflected an older and tenacious notion that race was a scientifically quantifiable reality. These claims were firmly rooted in the eugenics literature of the 1910s and 1920s. The state turned to Charles Davenport's study, *Race Crossing in Jamaica*, and to the work of W.E. Castle, a Harvard geneticist, S.J. Holmes, a University of California biologist, and E.B. Reuter, a University of Chicago sociologist, for evidence of the deterioration that would result from interracial marriage. In each case, Marshall was able to point to more recent analysis by Otto Klineberg and Ashley Montagu that illuminated the racist assumptions, methodological flaws, and the thin data in this early work. Klineberg and Montagu stood among the newer generation of social scientists who argued for the cultural and sociological constructs of racial difference.[42] As Elazar Barkan has argued in *The Retreat of Scientific Racism*,

40. "Petitioner's Reply Brief," *Perez v. Moroney [Lippold]* L.A. 20305, 20-22. Quotation from 21, originally in the decision of *State v. Tutty*, 41 Fed. 735.
41. *Ibid.*, 23-24.
42. *Ibid.*, 33-44.

this shift in perspective from viewing race as a biological reality to viewing race as a social construction spelled the demise of eugenics among scientists in the late 1930s and early 1940s.[43] Marshall's use of this work to refute the state's claims serves as a reminder that such perspectives lingered in the areas of law and policy long after they were discredited in the halls of the academe.

Finally, Marshall turned his pen to the sociological concerns raised in the state's brief. Here he encountered the use of John LaFarge's work. Marshall dismissed the application of this work by arguing that LaFarge would object to interracial marriages in particular cases, but the statute in question would bar them completely. Also, Marshall claimed that the social tensions with which the Jesuit was concerned were outside of the ability of the state to legislate. Tellingly, not unlike LaFarge and Donovan before him, Marshall turned to analogy to undermine the notion that "social tensions" were sufficient reason to legislate against interracial marriage: "The wedding of May and December, within the age limits of the statute, of the cultured to the ignorant, of the sick to the strong, of the poor to the rich, of the handsome to the ugly, of the Jew to the Gentile, of the Protestant to the Catholic, in none of these does the state venture to express a judgment."[44] Thus, Marshall returned race to the realm of social and cultural difference, highlighting the goals of white supremacy served by the anti-miscegenation statute.

IV. The Decision

In October 1948, the Supreme Court Justices in the state of California took the momentous step of being the first high court in the United States to strike down an anti-miscegenation statute. The decision was close with a majority of four justices and a minority of three. The dissent, written by Justice John Shenk, took the effort to rehearse in great detail the points and arguments of the state's case, but it was the majority opinion that broke new legal ground.[45] The decision as rendered in the *Perez* case formed a foundation for the subsequent 1967 U.S. Supreme Court ruling in the *Loving* case.

When Justice Roger Traynor wrote the majority opinion in the *Perez* case it was clear that he had absorbed Daniel Marshall's reasoning in his response to the state. Though there was a definite consideration of the free exercise of religion question, it had been subsumed in the Fourteenth Amendment claims of the case. Thus, in summarizing the points at stake, Traynor wrote: "If the miscegenation law under attack in the present proceeding is directed at a social evil and employs a reasonable means to prevent that evil, it is valid regardless of its incidental effect upon the conduct of particular religious groups. If, on the other hand, the law is discriminatory and irrational, it unconstitutionally restricts not only religious liberty but the liberty to marry as

43. Elazar Barkan, *The Retreat of Scientific Racism: Changing Concepts of Race in Britain and the United States between the World Wars* (Cambridge: Cambridge University Press, 1992).
44. "Petitioner's Reply," *Perez v. Lippold*, L.A. 20305, 45-54. Quote from 48.
45. Shenk, "Dissenting Opinion," *Perez v. Lippold*, L.A. 20305.

well."[46] Traynor rehearsed the case law establishing marriage as a fundamental right that includes the right to marry the person of one's choosing. The California anti-miscegenation statute restricted that choice by placing whole classes of persons out of bounds without establishing that there was clear reason for the restriction. He rejected the arguments of both physical inferiority and social tension as a reason for the restriction. Citing cases related to jury selection and residential segregation, Traynor argued that promoting peace could not come at the expense of fundamental Constitutional rights. Traynor laid the blame for social tensions on racial prejudice: "If they [progeny of mixed marriages] do [suffer stigma of inferiority and rejection by both races], the fault lies not with their parents, but with the prejudices in the community and the laws that perpetuate those prejudices by giving legal force to the belief that certain races are inferior. If miscegenous marriages can be prohibited because of tensions suffered by the progeny, mixed religious unions could be prohibited on the same ground." In making this analogy, Traynor pointed directly to John LaFarge, noting that the Jesuit called the unions "not unlike" one another.[47] Finally, Traynor faulted the statute for failing to clearly define all of the terms employed to designate racial groups.

Traynor's decision was supplemented by two concurring opinions that forcefully expressed dismay at the arguments used by the state to justify the anti-miscegenation law. Calling the statute a "product of ignorance, prejudice and intolerance," Justice Jesse Carter cited the Declaration of Independence, the Bill of Rights, the Fourteenth Amendment to the Constitution, and the Charter of the United Nations as important documents that it contradicted. He was particularly moved by Marshall's use of the quotation from *Mein Kampf*, which he reproduced in full in his opinion.[48] Justice Douglas Edmonds wrote a concurring opinion that came the closest to affirming Marshall's claims about free exercise. In large part, Edmonds agreed with Traynor, but he argued that freedom to marry was protected under the guarantee of religious freedom and that the proper emphasis should be placed on the absence of a clear and present danger that could justify compromising the First Amendment right of free exercise.[49]

In the wake of the California State Supreme Court's decision in the *Perez* case, both Catholic and secular media reported the ruling. The secular media, in particular, recognized the willingness of some Catholics to challenge anti-miscegenation statutes as signaling the emerging presence of Catholics in the national civil rights movement. For instance, the *Nation* explained that "Marshall's achievement is a personal triumph, for most of the civil-rights organizations failed or refused to participate in the case on the assumption that miscegenation statutes could not be successfully challenged in the court."[50]

46. Traynor, "Majority Opinion," *Perez v. Lippold*, L.A. 20305, 2.
47. *Ibid.*, 22-23.
48. Jesse Carter, "Concurring Opinion," *Perez v. Lippold*, L.A. 20305.
49. Douglas Edmonds, "Concurring Opinion," *Perez v. Lippold*, L.A. 20305.
50. "Seventy-Six-Year-Old Miscegenation Statute," *Nation* 61 (October 16, 1948): 415.

Reports of the decision in Catholic journals tended to laud the *Perez* ruling as a moral victory, while continuing to sound a note of caution about the social and cultural environment for interracial marriages. In the initial reporting of the decision, the editors of *America* (led by John LaFarge, who served as an associate editor, an executive editor and eventually editor-in-chief from 1926 until his death in 1963) quoted directly from Francis Connell's 1938 piece in the *Ecclesiastical Review* that called for Catholics to resist intrusive legislation. However, the quote from Connell was followed by a caution about the "great personal problems and difficulties" that an interracial marriage would entail. Gravely, the editors remarked: "There are few people who can accept such a burden. Toward them the attitude of Catholics will be dictated by respect for the person redeemed by Christ and the sacrament instituted by Him."[51]

Some months later, *America* carried an article written by the Jesuit legal scholar, Robert F. Drinan. Even though the article was entitled "Triumph over Racism," Drinan failed to share the optimism of the writers at *Time* and the *Nation*, closing his analysis of the decision with the following advice: "There should, of course, be no agitation to repeal such statutes since 1) it is unrealistic to expect any such repeal, and 2) such a course of action might perpetrate the fallacy that Negroes, as a general practice, desire to intermarry."[52] With this statement, he replicated the reluctance of LaFarge and many members of the hierarchy to risk challenging traditional taboos against interracial relationships in the name of racial justice. This final caution received a stinging rebuke from Ted LeBerthon, a Catholic journalist from Los Angeles, who suggested that Drinan had been struck by "an attack of excessive prudence" and that "the Church, in the interest of true prudence, should encourage the repeal of laws everywhere against interracial marriage, against anything that would intimate that our brother in Christ, the Negro, is something less than a human person."[53]

The coverage in the *Interracial Review* was much more positive than that in *America*, but the editors still felt compelled to strike a balance between LaFarge's public reticence and the Church's teachings. While they took into account LaFarge's cautions and the state's use of them, the editors cast the problem of contemporary social conditions as arising "not from anything in their marriage itself, but from the attitudes of the group around them"—attitudes that they were working to change. They argued that LaFarge's position helped to clarify Church teaching that "declares the absurdity and wrongness of any regulations which would take this matter out of where it properly and alone belongs: the free choice of the individuals concerned." This reading of LaFarge's position cast the problem of social conditions as something that could be dealt with through activism in the pursuit of racial justice. The editors lauded the California decision for correcting a "major moral and legal" scandal, and "because it is a powerful exemplification, in an unexpected quarter, of the far-reach-

51. "Interracial Marriage," *America* (October 16, 1948): 36.
52. Robert F. Drinan, S.J., "Triumph Over Racism," *America* (January 22, 1949): 431.
53. LeBerthon, Ted, "Correspondence: Interracial Marriages," *America* (March 12, 1949): 640.

ing bearings of Catholic moral and sacramental teaching upon human conduct: of the Church's power to heal a wound that the accumulated wrongs of centuries have inflicted upon American society."[54]

The editors of the *Interracial Review* recognized the potential contained within Marshall's willingness to place canon law in conflict with the civil code of law. Although his position was a risky one to take during an era in which Paul Blanshard and other intellectuals were accusing Catholics of being unable to think for themselves, Marshall's argument in the *Perez* case illuminates the ways in which religious institutions and social teachings can provide alternative narratives that work to resist oppression.[55] Marshall's strategy proves that, rather than being unable to think for themselves, increasingly Catholics were willing to creatively mine their traditions and teachings for new ways to pursue social reform. In that vein, Catholics continued the process of negotiating their public identity as both Catholics and Americans while they challenged the coercion and ideology of racist marriage legislation with their own code of laws. Differing opinions amongst Catholics make it clear that not everyone was prepared to make the shift to Marshall's counter-hegemonic perspective in 1948, yet the alternative was there and it gained increasing support within the Catholic community in the period leading up to the landmark 1967 Supreme Court decision in *Loving* v. *Virginia* that declared anti-miscegenation statutes unconstitutional.[56]

54. "The California Marriage Decision," *Interracial Review* 22 (January 1949): 4.

55. Paul Blanshard, *American Freedom and Catholic Power* (Boston: Beacon Press, 1949). Blanshard's text began as a series of articles in the Nation in 1948. For an insightful account of the tendency among intellectuals to distrust American Catholics, see John T. McGreevy, "Thinking on One's Own: Catholicism in the American Intellectual Imagination, 1928-1960," *Journal of American History* (June 1997): 97-131.

56. For evidence of this shifting position see Southern, "But Think of the Kids," 83-93.

Una Iglesia Más Mexicana: Catholics, Schismatics, and the Mexican Revolution in Texas, 1927-1932

Kristin Cheasty Miller

March 16, 1930 was a dreary Sunday in San Antonio, Texas. It was raining. It had, in fact, been raining almost continuously for three days—a remarkable occasion in what is normally a rather dry and sunny climate. Surprisingly, instead of dashing about under umbrellas or hiding away indoors on this rainy afternoon, much of the Mexican working-class community of San Antonio held a parade. Impervious to the inclement weather, hundreds of people gathered to follow bugles and drums, an honor guard, and a marching band through the rain to the train station because this, for them was a landmark day. Don José Joaquín Pérez Budar, the archbishop and patriarch of the politically and religiously controversial Mexican Catholic Apostolic Church (ICAM), was finally coming from Mexico City to meet his followers in Texas.[1]

In both Mexico and in Texas, the schismatic Mexican Catholic Apostolic Church has largely vanished from historical memory. This all-but-forgotten movement, however, sits at the crux of many critical narratives in the history of post-revolutionary Mexico, and in the history of Mexican immigration to the United States during that same time. This article examines the popularity of the ICAM in Texas within the context of contested national and class identities for the Mexican working class living in Texas. It also examines the relationship between the Roman Catholic Church in the United States and these marginalized, often impoverished, Mexican immigrants, particularly in light of changing demographics and the resultant shift in political power in local communities. In addition, this study argues that the Roman Catholic Church's antagonism toward the newly installed "revolutionary" government of Mexico nega-

1. "Viene el Patriarca Pérez a San Antonio," *El Heraldo Mexicano*, (San Antonio, Texas), March 17, 1930, microfilm. Note: The name of this church in Spanish is the *Iglesia Católica Apostólica Mexicana*, although at different points it went by a variety of names. Fully conflated, this church organization's name was the *Iglesia Católica Ortodóxa Apostólica Nacional Mexicana*. There was a great deal of changeability in the name; ICAM, however, is the simplest and most consistently used appelation to use for this paper.