

Slide 1: The Civil Rights Movement exemplifies the sense of justice and the rule of law that is the foundation of the American way of life. The struggle of African Americans to find equality through the law has given all people, regardless of race or ethnicity, a greater understanding of the legal system.

For minorities wishing to revolutionize a society that oppressed and dismissed them, the fight began on a local stage. Each victory brought celebration and each defeat took the battle to the next level. The Supreme Court of each state struggled with the issues of the civil rights movement. Some transcended the expectations of the time and some merely reflected the mindset of the majority. In Michigan, as in many other states, the Supreme Court contemplated the issue of racial equality even before statehood. Whether the Court failed those seeking justice or aided the cause, the ramifications of their decisions still affect the people of Michigan today.

The Supreme Court of Michigan offers a voice to people who are often unheard or unnoticed. The Supreme Court has the highest authority in the state and has ruled on such issues as where a man can sit, where someone can live, who can vote, and what constitutes equality. Determining whether decisions of the past were right or wrong is beyond the scope of this analysis. Evaluating the merit of a decision without the context of the time or place, with no feeling for social pressures or norms, can result in a skewed perception. The purpose of this presentation is to demonstrate that every decision the Court makes, the actions and processes of the Michigan Supreme Court, affect every citizen in this state, regardless of race or gender.

Slide 2: Title Page to the document “Transactions of the Supreme Court of the Territory of Michigan: 1805-1814”

Slide 3: As early as the 1800s, the territory of Michigan was grappling with the ramifications of slavery and the ideals of human dignity. In one early case, *Denison v Tucker* (1807), a family of slaves petitioned the Supreme Court of the Territory of Michigan for their freedom and were denied a writ of habeas corpus by Judge Woodward. In this case, a Detroit resident, Catherine Tucker, inherited four slaves from her husband, who had owned the slaves legally under the laws of Upper Canada before Britain surrendered Detroit to the United States. The Denisons argued that British law allowed for emancipation, but Judge Woodward remanded the family back to the custody of Ms. Tucker. Judge Woodward’s reasoning was that the slaves had been legally possessed under the laws of Upper Canada and that the treaty between the United States and Great Britain regarding American and French and British subjects living in Michigan “had guaranteed foreign subjects the right to maintain their property, including slaves, held at the end of British occupation in 1796.” (Mitchell 2)

In his decision Judge Woodward set a precedent that repeats throughout Michigan judicial history; even though he found slavery distasteful, and said of the institution “absolute and unqualified slavery of the human species in the United States of America is universally and justly considered (its) greatest and deepest reproach” (DCL Vol.1986, Winter), he still decided in a manner that supported the institution. Many future justices would follow in those footsteps by making decisions they found morally reprehensible and yet they believed to be legally valid.

Another complexity of Michigan’s judicial system that dates back to the time of its status as a territory is the contradictions amongst cases. One month after the *Tucker* decision, Judge Woodward ruled *In the Matter of Richard Pattinson* that the Territory was not bound to return fugitive slaves Joseph and Jane Quinn to their owner Richard Pattinson. In this case, the two slaves escaped from their home in Canada to seek refuge in the Territory. The decision

emphatically stated that there was no obligation to give up fugitives from a foreign jurisdiction. According to Judge Woodward, the same Upper Canadian law that allowed for Ms. Tucker to keep her slaves did not require Pattinson's fugitive slaves to be returned to him. A review of African-American civil rights cases repeatedly demonstrates similar contradictions.

Slide 4: Voting is considered by many to be one of the most essential civil liberties a person can possess. The right to vote acknowledges a person as an equally contributing member of a society and gives them an opportunity to contribute within the structure of their community. In Michigan, three cases in particular demonstrate the struggle of African Americans to attain recognition of their citizenship and, by extension, their right to vote. In all three cases, the right to vote was denied to non-white citizens. *Gordon v Farrar* and *People v Dean* are two cases that involve the definition of the term 'white' and the legislation of the racial content of a person. Once it was decided, due to constitutional provisions, that voting was an exclusively white male privilege, the question of how to define 'white' became the focus of the struggle for the right to vote. In the *Gordon* case, the Supreme Court denied Gordon the right to vote without broaching the subject of what percentage of African blood would serve to disqualify a voter; skin tone was determinative and inspectors were empowered to decide. In their decision in the *Dean* case, "Justices Campbell, Christiancy, and Cooley as a majority concluded that a person was white who had less than one-fourth African blood" (1986 DCL 1127). Dean was allowed to vote, but only because it was determined that he was 'white' based on this definition.

After the passage of the 15th Amendment, which states that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," there was denial of citizenship for ex-slaves, which constituted the majority of the black population in the United States. In *Hedgeman v Board of Registration*, the question revolved around the rights of citizenship for the son of ex-slaves. While the justices again lamented the horror of slavery in the history of the United States, they ultimately decided that because Hedgeman's parents were not citizens of the United States, neither was he; consequently he could not vote. It would be a long time before African Americans could vote without restriction.

In January of 1869, the governor recommended that the word 'white' be stricken from the constitutional article specifying the qualifications of electors. The amendment to the Michigan constitution was passed in November, finally granting suffrage to black male Michigan citizens.

Slide 5: One of the first Civil Rights victories in Michigan occurred in 1869, through the decision in *Workman v Board of Education*. This case demonstrates the very progressive nature of the legislature in Michigan at that time. The case originated in 1868, when Joseph Workman attempted to enroll his son in the Duffield Union School and the son was denied admission based solely on his race. In 1842, the legislature had given the Detroit Board of Education full power and authority regarding the establishment of schools and educational policies. Detroit had subsequently created two schools specifically for African-American children and had required African Americans to travel, regardless of location, to those schools, which did not have higher-level grades. In 1867, the Michigan legislature enacted the general school law prescribing racial equality in Michigan school districts. The Detroit Board of Education fought this law on the premise that segregation spared African Americans from having to be confronted by "strong prejudice against the colored people among a large majority of the white population" and that the Detroit school charter had been re-enacted after the passage of the law. The Court's decision held

that the law superseded the Detroit charter. The Court chose not to discuss arguments of policy and did not address the plaintiff's argument of injustice due to the inequality. This ruling did not provide for integration, but the subsequent segregation that dominated the 20th century was not founded on state law, in part thanks to the decision in *Workman v Detroit Board of Education*.

Slide 6: The issue of segregation within the realm of public accommodations manifests itself through several cases. *Day v Owen* was the first public accommodation case in Michigan and affirmed the practice of segregation. *Day* was followed by *Ferguson v Gies*, in which the Court followed the dictates of the Michigan Civil Rights Act and unanimously decided that discrimination based on color/race was illegal. Ferguson sued the owner of an eating establishment for requiring him to be served food only in the saloon area of the establishment and not in the restaurant portion. Dismissing the *Day* precedent, the Court held that an establishment could not discriminate on the basis of color alone. *Bolden v Grand Rapids Operating Corp.* gave African Americans the undisputed right to sue for damages if discriminated against.

Slide 7: *Day v Owen* preceded the Michigan Civil Rights Act and affirmed the legitimacy of segregation in that time period. Owen possessed a steamboat that offered transportation from Detroit to Toledo. When Day attempted to purchase cabin accommodations and was denied that opportunity, he sued. In this instance, the Michigan Supreme Court held that a steamboat operator could refuse passage to a Negro. "The Court held that while a common carrier could not have refused to transport Day, it could require him to conform to the reasonable regulations of the vessel. Regulations were reasonable if 'calculated to render the transportation most comfortable and least annoying to passengers generally.'" (Mitchell 19) In other words, the carrier could not refuse to transport a Negro because he was black, but could refuse to transport him if it would make the other passengers uncomfortable.

Slide 8: The first case brought to the Supreme Court after the passing of Act 130, known as the Civil Rights Act of 1885, was *Ferguson v Gies* in 1890. The Court, in complete unison and agreement, found for Ferguson. William W. Ferguson had entered a restaurant in Detroit and had been told that he could only be served in a specific location, what was known as the 'saloon' side of the restaurant. Finding this side to be less desirable and still being refused service, Ferguson decided to sue the establishment owner. He employed D. Augustus Straker and sued for damages. Initially Ferguson was defeated in court, but he forged ahead. The Michigan Supreme Court reversed the lower court's ruling on the grounds that the judge had instructed the jurors that 'separate but equal' applied to Act 130 and that equal did not have to mean exactly the same. The Michigan Supreme Court countered by saying that discrimination based on color was illegal under Act 130. Referring to *Day v Owen* and dismissing the precedent, Justice Morse stated, "It is but a reminder of the injustice and prejudice of the time in which it was delivered." *Ferguson v Gies* forced the Court to qualify that the 'separate but equal' doctrine inherently classified African Americans as inferior. This case came to be known as "Michigan's Great Civil Rights Case" (73 MBJ 296).

Slide 9: In the *Bolden v Grand Rapids Operating Corp.* case, Emmet N. Bolden, a dentist, was refused seating on the first floor of a movie theater because of his race. That refusal clearly violated Act 130, known as the Civil Rights Act, which "provided against discrimination in

persons because of race, creed, or color, in regard to accommodations and privileges of inns, restaurants, theaters, etc.” The decision reiterated the findings of *Ferguson v Gies*. In addition, this case set the precedent for use of police power. The Court stated “under the police power, supervision may be exercised over the use of private property, when the health, morals, or welfare of the public demands it.” (239 Mich 318)

Slide 10: The people represented in the cases held as much import as the actual decisions. They provided role models for young minorities and pioneered new territory in the fight for equality. William W. Ferguson was the first African American admitted into the Detroit public school system after the *Workman v Detroit Board of Education* decision. He later became a lawyer and the first African-American legislator in Michigan. He was a trailblazing pioneer who helped improve the conditions of African Americans not only in Detroit but also in the entire state.

Slide 11: D. Augustus Straker defended William W. Ferguson in *Ferguson v Gies*. He too was a very prominent African American and one of the first minorities to argue before the Michigan Supreme Court. Detroit Mayor Dennis Archer recently opened a time capsule from 1900, to which Straker was the only contributing African American. His letter reads:

Sir-none who have lived the allotted time of human life, within the confines of our beautiful city can fail to notice the changes, and events which have marked the 19th century, and especially so as relates to the colored people living, and who have lived in Detroit. The 19th century found the colored people of Detroit a race of slaves although slavery is not known ever to have had a foothold here. The incoming 20th century finds every man, and woman, and child of the colored race enjoying complete freedom under the law. The 19th century found the colored race in Detroit ignorant, uneducated, poor, and unenlightened, save with few exceptions. As the 20th century dawns upon us with every school door in the City of Detroit, wide open, welcoming within its walls, every colored, as well as white child... The 20th century finds the colored citizen of Detroit in the enjoyment and right to go, and enter every public place established for public accommodation... If we should augur from the past and present, we have the brightest expectation for the future. A prejudice does now exist on the fringe of the 20th century – I predict that the sunlight of a more perfect understanding of the Fatherhood of God and the brotherhood of man will drive out the demon prejudice and when the 21st century arrives he will find no resting place in the beautiful city of the straits.

Workman v Detroit Board of Education, Ferguson v Gies, and Bolden v Grand Rapids Operating Corp. gave D. Augustus Straker, and other minorities, hope for the future.

Slide 12: Housing was one of the last bastions of legally upheld segregation. Many theories attempt to account for the actions of the Court, which repeatedly decided against segregation in education and accommodations but allowed discrimination in zoning policies to continue. One theory is that “housing was perhaps considered too traditionally personal to allow interference by the legislature or judiciary” (26 WnL 24). An early example of a case involving a restrictive covenant is *Parmalee v Morris* in 1922. The Parmalee’s had attempted to buy land in a subdivision with specific restrictions against blacks and liquor businesses. They subsequently sued under the premise that the practice of racially restrictive covenants was contrary to the 13th and 14th Amendments. The Court “took the view that a covenant forbidding the occupation of

property by colored persons is not forbidden by the Federal Constitution” (66 A.L.R 532). Racially restrictive covenants were again upheld in a very prominent case, *Sipes v McGhee*. *Sipes v McGhee* was later consolidated with *Shelley v Kraemer* and the United States Supreme Court ruled that racially restrictive covenants are illegal.

Slide 13: The cases chosen for this presentation represent a varied mix of the Court’s work. Early in its judicial history, the Michigan Supreme Court made powerful decisions that helped both promote and stifle change. Typically, the Court reflected the conservative beliefs of Midwestern Michigan society. “Michigan’s approach to the problems of a multi-racial society has been basically conservative; that is, the legislature and the Supreme Court have rarely been in the forefront of social change. In a couple of surprising and striking instances, Michigan law was decades ahead of the United States as a whole with regard to racial equality.” (Mitchell 1) Whether the results were positive or negative, the Court has had an undeniable impact on our lives.

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