The second significant Michigan Supreme Court decision confirmed that the state prohibited racial segregation in Detroit public schools. The Court decided *People ex rel. Joseph Workman v The Board of Education of Detroit* in the same year (1869) that Michigan ratified the Fifteenth Amendment, which prohibited states from depriving citizens of the right to vote on the basis of race. Michigan simultaneously amended its own laws to enfranchise blacks; it did this at the high point of the post–Civil War effort to reconstruct the former Confederate states and guarantee equal rights to blacks throughout the nation.

Michigan had been among the most antislavery states in the Union, where abolitionists enjoyed relative safety and through which many fugitive slaves escaped to Canada via the “underground railroad.” The threatened expansion of slavery into the western territories turned Michigan almost overnight from a solidly Democratic into a fiercely Republican state. Indeed, Jackson has the best claim to having been the birthplace of the Republican Party. All the justices on the Michigan Supreme Court were antislavery men, and in the *Workman* case they simply followed the policy of the state legislature. Yet the origin, and especially the results, of this case also show the limits of nineteenth-century Michigan’s commitment to racial equality.

Very few blacks lived in the original territory of Michigan. According to a British census of 1782, 179 slaves (in addition to Indian slaves) lived among the 2,200 people along the Detroit River. The act that organized the territory, the Northwest Ordinance of 1787, declared, “There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted.” But governors of the territory interpreted this provision to mean that no new slaves could be brought into the territory. Augustus D. Woodward, the first territorial judge in Michigan, owned slaves himself and refused to emancipate slaves already held in the territory. The Jay Treaty of 1794 also guaranteed the property rights of resident slave owners. Twenty-four slaves lived in the original Michigan territory according to the 1810 census; 32 were counted in 1830. Fugitives ran in both directions across the border; some Canadian slaves escaped into Michigan before slavery was abolished in Canada in 1833, and some Michigan slaves escaped into Canada. The three slaves living in Michigan in 1835 were freed by the state constitution’s abolition of the institution. When the Civil War began, 6,800 free blacks resided in the state, one-quarter of them in Wayne County.

Free blacks in the antebellum North possessed a range of rights and suffered a range of discrimination, but in no state did they enjoy complete equality before the law. Nineteenth-century Americans viewed rights according to a hierarchy that has largely been forgotten. The most fundamental were natural rights—the rights to which all human beings were entitled—referred to in the Declaration of Independence as “life, liberty, and the pursuit of happiness.” But governors of the territory interpreted this provision to mean that no new slaves could be brought into the territory. Augustus D. Woodward, the first territorial judge in Michigan, owned slaves himself and refused to emancipate slaves already held in the territory. The Jay Treaty of 1794 also guaranteed the property rights of resident slave owners. Twenty-four slaves lived in the original Michigan territory according to the 1810 census; 32 were counted in 1830. Fugitives ran in both directions across the border; some Canadian slaves escaped into Michigan before slavery was abolished in Canada in 1833, and some Michigan slaves escaped into Canada. The three slaves living in Michigan in 1835 were freed by the state constitution’s abolition of the institution. When the Civil War began, 6,800 free blacks resided in the state, one-quarter of them in Wayne County.

Free blacks in the antebellum North possessed a range of rights and suffered a range of discrimination, but in no state did they enjoy complete equality before the law. Nineteenth-century Americans viewed rights according to a hierarchy that has largely been forgotten. The most fundamental were natural rights—the rights to which all human beings were entitled—referred to in the Declaration of Independence as “life, liberty, and the pursuit of happiness.” But governors of the territory interpreted this provision to mean that no new slaves could be brought into the territory. Augustus D. Woodward, the first territorial judge in Michigan, owned slaves himself and refused to emancipate slaves already held in the territory. The Jay Treaty of 1794 also guaranteed the property rights of resident slave owners. Twenty-four slaves lived in the original Michigan territory according to the 1810 census; 32 were counted in 1830. Fugitives ran in both directions across the border; some Canadian slaves escaped into Michigan before slavery was abolished in Canada in 1833, and some Michigan slaves escaped into Canada. The three slaves living in Michigan in 1835 were freed by the state constitution’s abolition of the institution. When the Civil War began, 6,800 free blacks resided in the state, one-quarter of them in Wayne County.

Free blacks in the antebellum North possessed a range of rights and suffered a range of discrimination, but in no state did they enjoy complete equality before the law. Nineteenth-century Americans viewed rights according to a hierarchy that has largely been forgotten. The most fundamental were natural rights—the rights to which all human beings were entitled—referred to in the Declaration of Independence as “life, liberty, and the pursuit of happiness.” But governors of the territory interpreted this provision to mean that no new slaves could be brought into the territory. Augustus D. Woodward, the first territorial judge in Michigan, owned slaves himself and refused to emancipate slaves already held in the territory. The Jay Treaty of 1794 also guaranteed the property rights of resident slave owners. Twenty-four slaves lived in the original Michigan territory according to the 1810 census; 32 were counted in 1830. Fugitives ran in both directions across the border; some Canadian slaves escaped into Michigan before slavery was abolished in Canada in 1833, and some Michigan slaves escaped into Canada. The three slaves living in Michigan in 1835 were freed by the state constitution’s abolition of the institution. When the Civil War began, 6,800 free blacks resided in the state, one-quarter of them in Wayne County.
private transactions such as employment or housing sales and rentals. No hard-and-fast rule distinguished these levels of rights. For example, some considered the right to vote a civil right. Although women were generally regarded as citizens, they faced many civil disabilities—especially married women—in all states. In the Dred Scott decision (1857), the United States Supreme Court held that free blacks might be citizens with full equality in some states, but could never be citizens of the United States.4

At the time of the Civil War, black Michiganders enjoyed most civil rights, but not political or social rights. The 1850 constitution limited the right to vote to adult white males. Blacks could not marry whites, and school districts could segregate pupils on the basis of race. In 1846, a convention of black citizens petitioned the Michigan legislature to extend the right to vote to blacks. The legislature refused, a senate committee declaring, “Our government is formed by, and for the benefit of, and to be controlled by, the descendants of European nations, as contradistinguished from all other persons. The humane and liberal policy of our government at the same time, extends its protection to the person and property of every human being within its limits, irrespective of color, descent, or national character.”5 Whites had an interest in maintaining control of the government, and extending the right to vote to blacks might only attract more of them to Michigan and enable them to take over the state. On the other hand, Austin Blair, a legislator and future governor, wrote a dissenting report arguing that depriving blacks of the right to vote violated the principles of the Declaration of Independence.6 Michigan’s policy—civil but not political or social equality—was relatively liberal for the antebellum United States. Racial equality in Michigan did not go as far as in Massachusetts or other northeastern states, but further than it did in most other states.

Michigan enacted stringent “personal liberty laws” to protect free blacks from being kidnapped as fugitive slaves, and zealously supported the Republican Party and the waging of the Civil War. But white Michiganders were unsure about how far race relations should be altered. Detroit became a center of anti-Republican sentiment, experiencing anti-war and especially anti-draft riots that targeted blacks in 1863. In 1867, white Michigan voters, like voters in other northern states, rejected a proposed constitution that would have given blacks the right to vote.7

The Michigan Supreme Court largely reflected this popular ambivalence about racial equality. In 1858, the Court unanimously affirmed a lower court’s judgment for John Owen, a steamship operator who refused to provide cabins for black passenger William Day. While such common carriers could not exclude blacks entirely, they could restrict their privileges if they believed it was for the good of the community. This position reflected the fact that white prejudice against blacks placed limits on “social equality.” As one historian notes, “The Court recognized that widespread beliefs about race—many of which the justices consciously or unconsciously shared—demanded some degree of deference.”8

Shortly after the war, however, the Court seemed to recognize a more liberal shift in popular opinion. A year after the Civil War ended, William Dean was arrested for voting in a Michigan election, because officials claimed that he was not white. Dean answered that his dark complexion was due to Indian ancestry and that he was well over half white. An “expert witness,” Dr. Zina Pitcher, testified that Dean was no more than one-sixteenth black. His judgment rested primarily on the shape of Dean’s nose. The trial judge instructed the jury that this made Dean sufficiently non-white to be convicted. Dean appealed, and the state attorney general frankly stated the racist basis of the law. “Our legislation, wherever it has been prejudicial, on account of color, was so framed as to almost always bring within its purview all such persons. And the same is more or less true of the ruling class throughout the United States.”9

The majority of the Michigan Supreme Court overturned the conviction, but not the law. Michigan might limit the right to vote to whites, the Court held, but people as white as Dean were qualified as white. Justice Martin dissented and ridiculed the majority decision. “If this be the correct rule, we had better have the constitution amended, with all speed, so as to authorize the election or appointment of nose pullers or nose inspectors to attend the election polls… to prevent illegal voting.” Appealing to the spirit of the antislavery movement and the Civil War, he asked, “Can we not at this day, and in a free state, rise above this rule of slavery, and occupy a still more liberal and humane ground?” But Martin’s opinion smacked of a kind of judicial supremacy that the majority disclaimed, especially when it was so far ahead of public opinion.10

Much like the steamship operator in Day, the city of Detroit provided only second-rate services for blacks. The city established “colored schools” in 1839, and the legislature affirmed this policy two years later. By the start of the Civil War, there were three colored schools for 185 black students in a system with 7,000 whites. The colored schools were “primary,” providing rudimentary education for six years without grades, and were often located farther away than neighborhood schools reserved for whites. Blacks were excluded from graded secondary and high schools. In 1842, the legislature established Detroit as a single, autonomous school dis-
racial ethnologist in the *Dean* case, was the principal author of the law.

Civil rights activists objected to the separate and inferior status of black schools and lobbied for integration. The antislavery movement and the Civil War’s turn to emancipation helped their cause. Former Republican Governor Austin Blair attempted to force the Jackson public schools to admit George Washington, a black student, and in 1867 the legislature enacted a new school law. The new act declared, “All residents of any district shall have an equal right to attend any school therein.” A subsequent act of 1869 repealed the 1842 Detroit charter and granted a new one that included the 1867 act’s language. The 1867 act was principally aimed at Detroit, the city in which most blacks lived, and the one most resistant to desegregation.

In April 1868, Joseph Workman attempted to enroll his son, “a mulatto, of more than one-fourth African blood,” into the Tenth Ward school, where he lived and paid school taxes. The school refused to admit him, claiming that it was exempt from the new laws. A group of civil rights activists, including the Second Baptist Church and future Governor John J. Bagley, then brought suit in the Supreme Court for a writ of mandamus—a judicial order compelling a public officer to do his duty.

Justice Manning had died in 1864, and the voters chose Thomas McIntyre Cooley to fill his seat. Chief Justice Martin died at the end of 1867, and Cooley became chief justice, while Martin’s place was filled by Benjamin F. Graves. Along with Justices Campbell and

The idea that the public had an interest in keeping the peace between hostile racial groups had been used to justify segregation in the *Day* case, and would be accepted by the United States Supreme Court when it upheld Louisiana’s segregation statute in *Plessy v. Ferguson* (1896). The school board claimed that separating white and black pupils was no less reasonable than separating male and female ones and pointed out that Michigan’s law against interracial marriage showed a policy favorable to racial classifications. The *Day* decision provided judicial authority for their case; even the Supreme Court of Massachusetts, the most racially liberal state in the Union, had accepted segregated schools in the city of Boston.
In this case, though, the Michigan legislature’s intent to forbid segregation was quite clear. Cooley noted that, “It is too plain for argument that an equal right to all the schools, irrespective of all such distinctions [of race or color, or religious belief, or personal peculiarities], was meant to be established.”16 It was equally clear that the legislature did not intend to exempt Detroit from the equal-access statute. As Justice Cooley went on to say, “That the Legislature seriously intended their declaration of equal right to be partial in its operation, is hardly probable.”17 Indeed, Cooley surmised quite accurately that the law was enacted with Detroit, and a few other cities, in mind. It is possible that Cooley also thought that the segregation policy violated the state constitution’s due process clause. “As the statute of 1867 is found to be applicable to the case, it does not become important to consider what would otherwise have been the law,” he concluded.18

Cooley’s decision marked the high point of civil rights activism in postwar Michigan. Two months before the decision, the Michigan legislature ratified the Fifteenth Amendment, and a November referendum to amend the constitution to allow blacks to vote passed by a $4,000–5,000 vote.19 Workman confirmed the Court’s antislavery and egalitarian disposition, and must have been especially satisfying for Cooley, who always regretted that he had not enjoyed greater educational advantages, and who had great faith in the power of education to level social distinctions and provide upward social mobility.20 Years later, Cooley would write with pride of Michigan, “No commonwealth in the world makes provision more broad, complete, or thorough for the general education of the people, and very few for that which is equal.”21

Justice Campbell entered a dissenting opinion, arguing that the state legislature had not been specific enough to override the great discretion given to the Detroit school board by earlier statutes. Workman’s case, he said, “depends much, if not entirely, upon the effect to be given to a changed condition in public affairs, and whatever corresponding change that condition may have wrought upon public opinion concerning the treatment of colored persons.” In effect accusing the majority of legislating from the bench, he warned, “Public opinion cannot have the force of law, until it is expressed in the forms of law.” Campbell further noted that the colored schools were “in no respect…differing from, or inferior to, other schools.”22 His legal formalism served illiberal ends. His dissent was typical of the social and cultural distance that often separated the self-made Cooley and the aristocratic Campbell. One historian notes that Campbell, the only Whig among the Big Four, was also the only one “to the manor born.”23

Workman’s legal victory did not immediately open all Michigan schools to black pupils. Detroit continued to drag its feet, refusing admission to blacks until legal challenges forced it to, by which time it was usually too late in the school year to make any difference. The city finally gave in after black enfranchisement allowed black Detroiters to exercise their political power. “Detroit’s school system had accepted integration as slowly as the courts would permit, resisting change at every point,” one historian concludes.24 After blacks entered white schools, administrators then attempted to establish racially segregated classrooms. When that failed, they made a last gesture to segregate by doing away with double desks within the classrooms, so that whites and blacks did not sit too close together. Smaller Michigan cities defied the law and maintained segregated schools into the twentieth century.25

In the second half of the twentieth century, federal courts began to enforce orders against de facto school segregation. Whereas Detroit schools were no longer segregated by the law (de jure), discrimination in the housing and employment markets and other kinds of unequal

The judicial impact on integration of Michigan public schools in the nineteenth century makes an interesting comparison to the twentieth-century attempt.
FOOTNOTES
4. Id.
8. Vander Velde, supra at 113.
9. People v Dean, 14 Mich 406, 438, 434 (1866); Vander Velde, supra at 108. Vander Velde points out that the Court refused to allow soldiers in the field to vote in Michigan elections, despite the overwhelming popular support for the policy, in deference to the plain text of the Michigan constitution, which required residency for voting. People v Braddock, 13 Mich 127 (1865). Martin dissented in this case, too.
12. Workman, supra at 400; Peebles, supra.
15. Peebles, supra; Workman, supra at 405–406.
16. Workman, supra at 409. The Massachusetts legislature had reacted similarly to the decision upholding Boston’s segregation ordinance, legislating against separate schools.
17. Id.
18. Workman, supra at 414.
22. Workman, supra at 414–419.
23. Shelly, supra at 104.
24. Katzman, supra at 87–89.
25. Id.
26. The Michigan Supreme Court recognized that this kind of segregation was not illegal. In Ferguson v Gies, 82 Mich 358 (1890), it held that “separate schools for the education of blacks and whites might exist, where the accommodations and advantages of learning were fully equal one with the other.” Thrun, supra at 10.