



Society Update

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“Booted and Spurred”: Railroads, the Range, and the Public Good, the case of *Williams v the Michigan Central*

Following is the transcript of Professor Martin Herschok's legal vignette from the Society's John W. Reed lecture at the Annual Membership Luncheon held Thursday, May 26, 2022.

Sometime during the day on Saturday, June 23, 1849, several horses belonging to Edward Williams wandered away from his 80-acre farm in Wayne County's Romulus Township. Eager to make their way back to their former residence in Hamtramck where they had recently been purchased, the animals retraced their steps, making their way north to the Chicago Road where they then turned east and travelled along the road until they reached the town of Dearborn, some sixteen miles distant from the Williams farm. Here they were seen by locals a little before dusk on the tracks of the Michigan Central Railroad, which they had wandered onto via an unfenced portion of the rail line running through the village common just south of the federal arsenal. A few hours later, the unfortunate animals, now hemmed in by the railroad's fenced right of way and shrouded in darkness and the mist of an early summer rain, met their demise at the hands of a Michigan Central passenger train, just west of the bridge crossing the Rouge River. One can only imagine the horror of the scene and the heart-rending shrieks of the doomed animals that unfolded before the stunned passengers (not to mention the terror, of course, experienced by the horses themselves). A few months after the accident, Williams, relying upon township law that deemed livestock free commoners on unfenced land, brought forward a suit in Wayne County Circuit Court against the Michigan Central Railroad Company after it refused to compensate him the full value he claimed for his now useless property.¹

Though his suit is the focus of what I want to talk about today, Williams was not the only Michi-

gan farmer angry with the Michigan Central and with the company's unwillingness to sufficiently redress the livestock losses that they too were experiencing due to the railroad's operations. Indeed, miles to the west of Dearborn, in the rolling farmland of Jackson County, farmers with property along the tracks of the railroad found themselves grappling with the identical problem—their animals were being killed by passing trains on unfenced stretches of track and the railroad refused to make full restitution. Letters, petitions, and protest meetings produced no resolution of the issue. In the face of corporate intransigence and a mounting death toll of livestock, farmers began to take matters into their own hands in the summer of 1849, placing obstructions on the rails, tearing up track, derailling engines, greasing the tracks, burning woodpiles, and even stoning and shooting at passing trains. As one Calhoun County farmer explained in a letter to his local paper, "The road has been for a long time, one gore of blood. No heathen altar ever smoked more continually with the blood of its victims. Horses and oxen, cows, sheep, and hogs—all free commoners by law—the road not fenced, and yet we are told that the owners are the trespassers. They force their way through our farms, leaving our fields, meadows and pastures all open as commons, and yet we are the trespassers if our stock pass over the road of their high-mightiness, and liable to them for damages. The road must be fenced, in the meantime, something near the value of the property destroyed must be paid."²

As the attacks intensified the Michigan Central, faced with diminished revenues and with its timetables in disarray, stepped up its efforts to snuff out the



Dr. Martin Hershock, holds a PhD in History from the University of Michigan and is Dean of the College of Arts, Sciences, and Letters and Professor of History at the University of Michigan–Dearborn. A specialist in nineteenth century American political and social history, his works include *The Paradox of Progress*, *The History of Michigan Law* (co-edited with Paul Finkelman), and *A New England Prison Diary*. His most recent published work focused on the role of African-American troops in the Vicksburg Campaign. Currently, he is stepping out of his comfort zone to focus on the Detroit Federal Screw Works strike of March 1938.

revolt, flooding the region with undercover operatives. After an alleged arsonist, whom the company later linked to the protesters, destroyed the Michigan Central's freight depot in Detroit late in 1850, warrants were issued and nearly fifty of the railroad insurgents were arrested and brought to trial.

Although the actions of the Jackson County farmers might appear astonishing and indefensible to the

modern listener, and Williams's suit might seem ludicrous—the farmers, most would contend, should have taken better care of their livestock—contemporaries would not have shared these dismissive views. Indeed, observers of the trials most certainly expected that Williams would be compensated for his property and that the Jackson County farmers would be acquitted on the grounds that they had been defending their legally established rights. When verdicts finally came down in the summer of 1851, especially in the case of *Williams v the Michigan Central Railroad*, however, the injured parties' claims for compensation were denied and their defense of traditional rights was repudiated. These rulings, breaking dramatically with customary community expectations/practice as they did, forever altered the traditional socioeconomic fabric of Michigan and in the process helped to stimulate profound social, economic, and political changes in the state.

The nineteenth-century American fencing/stock-law debate, which these cases exemplified, has garnered a good deal of attention from scholars. Though intensely studied, the meaning and ramifications of the controversy remain a subject of much debate. Some scholars have argued that the adoption of fencing laws and the process of closing the open range marked a watershed in the transition to capitalist values in the United States. Others, deny the existence of any precapitalist ambivalence among the disputants and instead maintain that the conflict was one of "interests" clashing over material concerns.³

This talk's opening vignettes clearly illustrate that the preservation of traditional communal rights in the form of range laws was a prominent concern for Michigan's family farmers. An 1876 memoir, *The Bark Covered House*, written by William Nowlin, a member of a Dearborn, Michigan, pioneer family, further illustrates the central role of the range in northern farm-family subsistence. Shortly after the Nowlins arrived in Dearborn in 1834, John, William's father, purchased two oxen and one cow. Nowlin remembered that the family's free-ranging cattle, which young Nowlin tracked daily across miles of timbered and newly broken farmland, were, for many years, the family's "main dependence" and, in his words, "our stand-by through thick and thin." As the family struggled to clear its land (employing the free-roaming oxen) and later as it worked to free the farm from a mortgage, potatoes, and milk and "thickened

milk" (rolled lumps of salted, dampened flour boiled in milk) remained staples of the family's diet well into the 1840s.⁴

Subsistence practices such as free-range grazing had been adhered to for generations back east, and thus they made perfect sense to the tide of Yankee settlers flooding into Michigan in the middle decades of the nineteenth century. The daunting task of clearing heavily timbered land and the lack of a reliable transportation network throughout much of the era ensured that even the most commercially minded farmers would spend a substantial number of years subsistence farming. Making use of unimproved open land for grazing, foraging, or hunting was a fundamental element of that precapitalist subsistence strategy. The rights and the legal traditions that supported this ethos, however, quickly came under attack as the agents of the new capitalist order, particularly the railroads, increasingly sought to restructure state law in a manner compatible with commercial expansion and unfettered property rights.

The emergence and timing of the fencing debate in Michigan resulted from several interconnected trends and specific occurrences. Among the most important of these was the state's belated recovery from the devastating Panic of 1837. Throughout most of the 1840s, Michigan's economy languished, and the state teetered on the brink of insolvency. In the last few years of the decade, however, Michigan experienced a pronounced turnaround characterized by sustained growth and heightened economic activity. In part this recovery was the result of the expansion of Michigan's rail lines, which offered residents direct rail connections to Chicago and the all-important eastern seaboard by 1852. The lengthening reach of the railroad radically transformed the state's farming economy and thrust Michigan's southern counties into the cash economy.⁵

Situated along one of the nation's main east-west trade arteries, southern Michigan was rapidly transformed into a center of market activity. Enticed by the opportunity provided by quick and reliable market connections, many farmers residing near the rail lines began shifting toward commercial farming. In the five years between 1845 and 1850, the gross tonnage of goods passing over the Central's rails jumped 415 percent. Ralph Waldo Emerson, an observer of this metamorphosis, marveled that a "clever fellow was acquainted with the expansive force of steam; he also saw the wealth of wheat and grass rotting in Michi-

gan. Then he cunningly screws on the steam pipe to the wheat crop. Puff now, O Steam! The steam puffs and expands as before, but this time it is dragging all Michigan at its back to hungry New York and hungry England."⁶

Although these changes were welcomed by many, others, conditioned to fear commercial entanglements by the recent panic and safely ensconced in a self-provisioning lifestyle, approached this new boom period with a healthy dose of skepticism, ambivalence, and even outright hostility. This uncertainty assumed myriad forms in the state, manifesting itself most concretely in Democratic political dominance (with its attendant market ambivalence and hostility toward monopolies); in the unabashedly antimarket revision of the state's organic law in 1850 (engineered by the Democrats); and, perhaps most dramatically, in the struggle to maintain traditional open-range privileges in the face of an emerging capitalist order embodied most tangibly by the state's flourishing railroad corporations. As Michigan's nascent railroads expanded their reach, these uncertainties were starkly highlighted.

Traveling at the unheard-of speed of thirty miles an hour, the Michigan Central's engines were involved in many accidents with livestock that wandered onto the largely unfenced track. When similar accidents had occurred during the period of state ownership, before 1846, state policy—partly dictated by political necessity but also in keeping with local township and county ordinances that recognized livestock as free commoners—was to pay farmers the full amount claimed for their livestock. The Central's president, John W. Brooks, had no such electoral concerns. He therefore determined to make the farmers face up to what he interpreted as their own negligence by implementing a policy of paying only one-half the appraised value of any livestock killed by the railroad. Farmers, construing Brooks's offer to pay anything at all as an admission of guilt and bolstered by the state's open-range tradition and legal precedent, demanded instead that the company pay full restitution.⁷

Though it might be tempting to conclude that the farmers' insistence on receiving full value represented "a calculating state of mind characteristic of capitalism," the equation of concern for money with a full-blown capitalist mentality may be too strong. Participation in, and cognizance of, the market did not always mean complete acceptance of it. A strong argu-



ment can be made, in fact, that the Michigan farmers' insistence on full, even inflated, compensation, was adopted as a survival strategy in the face of an expanding cash nexus. Given livestock's importance in their day-to-day lives, farmers could not help but be aware of the cost to replace their animals. This interpretation is further supported by the all-too-frequent claims made by the Michigan Central and its supporters that farmers inflated the value of their animals or that they intentionally drove sick and feeble animals onto the tracks. Certainly, some farmers may have done so. Others, however, may have claimed what seemed exorbitant values for their livestock because, in their self-provisioning world, livestock often represented a farmer's most valuable asset short of real estate.⁸

If we can ignore the railroad for a moment, moreover, the fact that these farmers continued to operate on the "fencing out" principle is a strong indication that they were still, in many respects, "precapitalist." Proponents of laws requiring the "fencing in" of animals advocated such measures as a means of securing property rights. Furthermore, supporters of these laws argued that such measures would foster improved stock breeding, renew the fertility of land through manuring, facilitate the intensification of agriculture, and free up capital and labor (required to maintain the extensive fences needed to enclose fields of crops) for more productive purposes—all trends closely associated with a capitalist sensibility. It is inconceivable that Michigan's farmers would have reacted with righteous rage to accidental railroad slaughter if they had already accepted the "fencing in" notion that

free-roaming stock threatened their market crops. Again, Nowlin's memoir offers a tangible illustration of this tension. After working diligently to clear a portion of his land and to construct "brush" fencing around his fields, Nowlin's father put in a small crop of wheat. The wheat "came up and looked beautiful," Nowlin recalled. "One day," however, "a neighbor's unruly ox broke into it." Young Nowlin was told by his father to retrieve the ox and take it home. When he arrived at his neighbor's house with the ox, Nowlin told the neighbor "that his ox had been in our wheat and father wished him to keep his ox away." The neighbor replied

that the Nowlins "must make the fence better and he [the ox] wouldn't get in." The senior Nowlin's desire to protect his market commodity from his neighbor's foraging ox and the neighbor's insistence upon traditional open-range privileges nicely illustrates a major tension spawned by encroaching capitalism—one that was brought to a head by the conflict between the Michigan Central Railroad and the farmers of Michigan. Up and down the Michigan Central line the state's yeomanry reacted to the new challenge posed to their communities and to their way of life. Who were these individuals? Why were they involved in these actions? What was it that they hoped to accomplish?

The evidence suggests that those individuals involved in the effort to preserve the open range in Michigan, though frequently connected to the market, shied away from complete immersion in and acceptance of the emerging capitalist order. One can only speculate about why this was so. Perhaps these men resented their loss of economic autonomy to impersonal market forces and seemingly tyrannical corporate power, a loss driven home by their inability to preserve their traditional way of life and established rights against the incursion of the railroad. For others, traumatic experiences in the marketplace may have led them to reevaluate their priorities. Younger activists and those who were not yet established as independent producers might have felt insecure about their prospects in the emerging capitalist order. Others may have seen the issue as a simple matter of preserving the nation's republican heritage and traditional property

rights. Whatever the reason for their activism, these men clearly felt buffeted and threatened by the shifting world around them; thus, they reacted by attacking those forces most closely identified with commercial expansion.

As shown, many of those involved in the reaction against the Michigan Central resorted to violence to vent their frustrations. Indeed, the use of such violence, even against inanimate objects like railroad engines, further reflected these farmers' traditional ideal of personal, face-to-face relationships. By and large, free-range activists ignored the courts and the organized structures of the state. In the main, Michigan's self-provisioning farmers remained suspicious of the legislature and courts, believing that powerful corporate entities such as the Michigan Central could readily manipulate and control the structures of government. Accordingly, open-range activists fell back upon traditional community-based modes of direct action.¹⁰

Curiously, another of the activists in the movement to defend tradition, Edward Williams, who lost his horses to that Michigan Central locomotive near the town of Dearborn, did not adhere to this pattern. In most respects Williams was typical of his fellow defenders of traditional rights. Born in New York State in 1794, Williams, along with his wife and son, migrated to Michigan sometime between 1832 and 1836. Two additional children, born in Michigan, completed the Williams household. Together the family worked an eighty-acre farm, valued at a mere \$252 in 1850, in Wayne County's Romulus Township. The Williams family fell far short of the mean wealth (\$1,048) attributed to state farmers, and even farther behind its Wayne County peers, whose farm values averaged \$1,851. The family seems either to have missed out on or chosen to opt out of the state's expanding commercial system. The 1850 census provides further evidence of the family's failure to adopt the modernizing trends of the day—although 70 percent of Michigan's children between the ages of five and nineteen were reported to have attended school (where skills necessary to succeed in an emerging commercial world were taught) the previous year, none of the Williams children did so. Nonetheless, rather than responding in a personal manner to the loss of his property and the affront to traditional rights posed by the Michigan Central's refusal to compensate him fully for his dead livestock, as did farmers farther west, Williams turned

to the courts.¹¹

It seems unlikely, given the above description of his life, that one could argue that Edward Williams was entirely comfortable with emerging market forces and legal institutions. Perhaps Williams's proximity to the state's main legal and commercial hub—Detroit—and thus his and his neighbors' long-term exposure to legal institutions explains his choice. Though Williams and his neighbors clearly participated in Michigan's cash economy, one cannot therefore infer that they were untroubled by their connections to it or by the potential loss of their autonomy to this system over which they could exert little direct control. On the contrary, Williams apparently took his independence very seriously and took aggressive steps to protect it. That Williams employed legal means rather than personal ones to do so may merely reflect the fact that the community in which he lived had already been transformed by an emerging capitalism that had rendered the world of personal interaction largely irrelevant and had begun to use law as an alternative to such personal confrontations. Conditioned to operate in the impersonal world of the market, Williams responded to his loss by resorting to the impersonal world of the courts.

The Williams suit and the trial of the Jackson County conspirators brought to the fore an ongoing debate that up until that point had been actively waged along Michigan's country lanes, in isolated frontier clearings, and beside the hearths of the state's family farms. In these two highly publicized and symbolic cases, the emerging capitalist order had its day in court.

Williams's attorneys argued that he was due compensation under the provisions of the state's 1847 session laws, which provided that "no person shall recover for damages done upon lands by beasts unless in cases where, by the by-laws of the township, such beasts are prohibited from running at large, except where such lands are enclosed by a fence." Given that the relevant Dearborn Township law deemed cattle and horses "free commoners" and thus free to graze on unfenced land, this line of reasoning maintained that it was incumbent upon the Michigan Central to fence its property or face the risk of litigation for damages done to legally grazing livestock.¹²

Concurrently, in a jam-packed court just a short distance away, the alleged Jackson County conspirators and their lawyers waged a similar battle on behalf of traditional rights. Painting the alleged conspira-

tors as righteous victims of a tyrannical corporation, defense attorneys, led by New York's William Seward, denounced the "monetary power" of the Michigan Central: "a power behind and above the government—a power that is seldom regulated by humane and just sentiments; [a power] that always seeks to crush those it cannot cajole."¹³

Prosecuting attorney James Van Dyke vehemently disagreed with these hostile characterizations of the railroad. The railroad and the broader changes that it represented, he professed, had done nothing but good in Michigan: "Where heaven's light was once shut out by dense forests, it [now] shines over fertile fields and rich luxuriant harvests; hope and energy sprung from their lethargic sleep, labor clapped her glad hands and shouted for joy. A detestable monopoly! These railroads built by united energies and capital are the great instruments in the hand of God to hasten onward the glorious mission of Religion and Civilization." The question facing the state supreme court, the Detroit jury, and the residents of Michigan was clear: Which of these competing social visions should prevail? Would traditional open-range community norms or the common-law principle of unhindered personal property rights triumph?¹⁴

Michigan's Supreme Court offered the first response in July 1851, affirming the Central's assertion of an owner's culpability for livestock killed on its tracks. "The idea that because horses and cattle are free commoners, they have therefore the lawful right of trespassing on private property, is absurd—preposterous in the extreme," Justice Abner Pratt asserted

in his majority opinion. "What are free commoners? Where may they run?" Pratt continued, "Surely not on individual property." "In legal contemplation," the justice continued, the railroad is neither a public common nor a public highway." Accordingly, he continued, "the voters of the Township of Dearborn could not, by any power vested in them by the Legislature, confer upon the plaintiff the right of grazing cattle and horses on lands granted to the defendants, exclusively for the construction and use of their railroad." Concluding with a flourish, Pratt asked if railroad corporations should, "be compelled to assume the guardianship of all the stray cattle, horses, and swine found strolling along the track on their Railroad?" "Most certainly not," he chided. "The owners are the only persons to look after them; and if they do not, it is but just that they should suffer the consequences of their own negligence and wrongful act—of their own want of care in the protection and preservation of their own property."¹⁵

On September 25, 1851, a Detroit jury determined the fate of the Jackson County conspirators: 20 defendants were acquitted; 12 were convicted and sentenced to prison terms varying from five to ten years. These two decisions marked the end of Michigan's long-standing open-range tradition and dealt a devastating blow to the state's self-provisioning family farms.¹⁶

These court decisions did not, however, mean the end of the struggle to preserve traditional rights or to limit corporate power. On the contrary, the furor in defense of the open range and precapitalist values continued. Indeed, Justice Pratt himself, a Marshall

Democrat, suggested a method of redress to the state's aggrieved farmers. While conceding that, according to the company's charter, the Michigan Central was not required to fence its road for the protection of domestic livestock, it was possible for that same body to correct this oversight. "Whether the charter contains powers and privileges which were improvidently granted by the Legislature, is not a question to be considered here in deciding the case." In limiting the competence of the court in this manner, Pratt pointed out a path forward...what the lawmakers had given, the lawmakers



could also take away. The antirailroad hostility generated by the open-range debate persisted throughout Michigan between late 1851 and 1855 and joined with a host of other emergent issues (local school control, temperance, nativism, and, most famously, opposition to slavery extension) to create a volatile political environment.¹⁷

That environment quickly boiled over, and Michigan's Jacksonian party structure crumbled. As mentioned, a great many political undercurrents played a role in eroding the old party foundations. Frequently overlooked in this story, however, is the critical role played by hostility to the state's railroads, a hostility that was in good measure created by the attempt to preserve a vanishing lifestyle in the face of sweeping transformation. Similarly ignored is the central role played by this issue in the formation of the new Republican organization in Jackson, Michigan, in July 1854. Although the bulk of the new party's platform focused on the alleged machinations of the "Slave Power" and the need to prevent the spread of slavery into the western territories, delegates to the Jackson meeting also adopted a plank pertaining to state affairs. At the heart of this plank was the following resolution:

"Resolved, That in our opinion the commercial wants require the enactment of a general railroad law, which, while it shall secure the investment and encourage the enterprise of stockholders, shall also guard and protect the rights of the public and of individuals, and that the preparation of such a measure requires the first talents of the State."¹⁸

The new party's surprising victory in the 1854 state election enabled the fledgling organization to act upon this plank. The Republican administration immediately moved to placate anxious state residents by pardoning the Jackson County railroad conspirators. Moreover, consideration of a general railroad law became a top priority for the new Republican legislature. In a revealing letter to Governor Kinsley Bingham, Isaac Christiancy, one of the chief architects of the new party, presented the importance of such a measure plainly:

"What contributed to the unpopularity of the last legislature more than anything else was the impression among

the people that they had been too much influenced by Railroad companies and neglected matters of general interest to the people. Now unless our legislators set their faces like flint against all these special favors to incorporated companies our Republican triumph is at once blown to the winds."

In late January 1855, the Republicans succeeded in passing the law. While the law opened the door for the creation of new railroad corporations, it also contained many prohibitions that addressed the concerns of a very different group of Republican voters—those who viewed the party as a means of preserving an older, and rapidly waning, lifestyle. Accordingly, all new railroads organized under the act, as well as those already operating in the state, were required to install upon their locomotives bells and steam whistles to be sounded before all grade crossings, to post warning signs at crossings, to fence the right-of-way, and to install special farm crossings with cattle guards where needed. By passing the law, the Republicans had lived up to a very important political promise and had reassured tradition-bound Michiganders that their rights were again safe.¹⁹

Such a limited victory, however, did not, and of course could not, change the fact that the tradition of self-sufficient farming was in decline and that one of the key pillars of that tradition—the open range—had been toppled. One of the main elements of the state yeomanry's self-provisioning lifestyle had been circumscribed. No more could the John Nowlins of the state loose their livestock to forage freely upon the unfenced lands of their neighbors. No longer could they look upon open land that they did not own as a resource available for communal use. A symbolic shift had occurred in Michigan law, and the culture of unfettered capitalism had gained the upper hand.

Endnotes:

¹ The details surrounding the loss of Edward Williams' horses are outlined in *Williams v. The Michigan Central Railroad Company*, 2 Mich. 259 (1851)

² *Marshall Democratic Expounder*, June 25, 1849. For details on the actions of the Jackson County farmers see Charles Hirschfeld, *The Great Railroad Conspiracy: The Social History of a Railroad War* (East Lan-

sing: Michigan State University Press, 1953).

³ See Jane Adams, "How Can a Poor Man Live? Resistance to Capitalist Development in Southern Illinois, 1870–1890," *Rural History: Economy, Society, Culture* 3 (Spring 1992): 87–110; Wayne K. Durrill, "Producing Poverty: Local Government and Economic Development in a New South County, 1874–1884," *Journal of American History* 71 (March 1985): 764–81; Steven Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850–1890* (New York: Oxford University Press, 1985); Shawn F. Kantor, *Politics and Property Rights: The Closing of the Range in the Postbellum South* (Chicago: University of Chicago Press, 1998); and Shawn E. Kantor and J. Morgan Kousser, "Common Sense or Commonwealth? The Fence Law and Institutional Change in the Postbellum South," *Journal of Southern History* 59 (May 1993): 201–42.

⁴ William Nowlin, *The Bark Covered House: or, Back in the Woods Again* (Ann Arbor: University Microfilms, 1966): 31–34, 60–66, 110. Caroline Kirkland, in her thinly fictionalized portrayal of life in frontier Pinckney, Michigan, noted the annual spring burning of local marshes to facilitate the growth of new grass for local ranging livestock. Caroline M. Kirkland, *A New Home, Who'll Follow? or, Glimpses of Western Life* (New Brunswick, NJ: Rutgers University Press, 1990), 112.

⁵ Martin J. Hershock, *The Paradox of Progress: Economic Change, Individual Enterprise, and Political Culture in Michigan, 1837–1878* (Athens: Ohio University Press, 2003).

⁶ Martin J. Hershock, "Free Commoners by Law: Tradition, Transition, and Closing the Range in Antebellum Michigan," 29 *Michigan Historical Review* (Fall 2003): 104; Ralph Waldo Emerson, *The Conduct of Life, Nature and Other Essays* (New York: E.P. Dutton, 1908), 192.

⁷ *Ibid.*, 106.

⁸ Kantor and Kousser, "Common Sense or Commonwealth?" 212–13; Charles Hirschfeld, "The Great Railroad Conspiracy," *Michigan History* 36 (June 1952): 100.

⁹ Nowlin, *Bark Covered House*, 44.

¹⁰ Hershock, *Paradox of Progress*, 47, 92.

¹¹ Hershock, "Free Commoners by Law," 112–13; Edward Williams Papers, 1838–1878, Michigan Historical Collections, Bentley Historical Library, University of Michigan, Ann Arbor.

¹² *Williams v. Michigan Central Railroad Company*, 2 Mich. 259 (1851).

¹³ Martin J. Hershock, "Blood on the Tracks: Law, Railroads Accidents, the Economy, and the Michigan Frontier," in Paul Finkelman and Martin J. Hershock, eds., *The History of Michigan Law*, (Athens: Ohio University Press, 2006, p. 48.

¹⁴ *Ibid.*, p. 48.

¹⁵ *Williams v. Michigan Central Railroad Company*, 2 Mich. 259 (1851).

¹⁶ Hirschfeld, "Great Railroad Conspiracy," 197.

¹⁷ Hershock, "Free Commoners by Law," 115–16.

¹⁸ *Ibid.*, p. 120.

¹⁹ *Ibid.*, pp. 120–122.

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Langford Morris Honored with Society's Top Honor

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2022 Annual Membership Luncheon



Advocates Guild Executive Committee Member Timothy Baughman (L) speaks with attorney David Porter (R) during the reception before the Luncheon. In the background is Society Treasurer Joseph Gavin.



Society Board member Mark Bendure (L) speaks with retired judge William Giovan (R). In the background are Society members Jane Sullivan Colombo and James Gross.



Society President-Emeritus Charles Rutherford visits with Board member Janet Welch. In the background are Marcia McBrien (L) and Patricia Rutherford (R).



Retired Justice Maura Corrigan sits with the table sponsored by law firm Kienbaum Hardy Viviano Pelton Forrest.



Gregory DeMars (L) and retired justice Stephen Markman (R) both serve on the Society's Board.



Justice Megan Cavanagh (L) speaks to table sponsor Thomas Kienbaum (R) before the luncheon begins.



Chief Justice Bridget McCormack addresses Luncheon attendees.



Society members John J. Lynch (L) and Jules Olsman pose for a photograph.



Justice Brian Zahra (R) speaks with Cooley Law School Professor Gerald Fisher (L).



Justice David Viviano (R) sits with attorney Mark Wisniewski (L), chair & CEO of table sponsor Kitch Drutchas Wagner Valitutti & Sherbrook.



A guest of table sponsor Dickinson Wright (R) greets Justice Elizabeth Clement (L) as she enters the Main Dining Room at the Detroit Athletic Club.



Society member and State Bar of Michigan executive director Peter Cunningham (L) speaks with SBM President-Elect James Heath (R).



Portraits of Justice:

Justice Aaron Vance McAlvy

Delivering Legal Services to Rural Michigan and Providing Geographic Diversity to the Bench

By: Lori A. Buiteweg, J.D.

Nichols, Sacks, Slank, Sendelbach, Buiteweg & Solomon, P.C.

Justice Aaron Vance McAlvy is described as a popular, painstakingly careful lawyer, judge, and justice¹. Born in Ann Arbor, Michigan, on July 19, 1847, he graduated from the Ann Arbor Public Schools in 1864 before attending the University of Michigan “Law Department” where he graduated in 1869.

Manistee was the home of Justice McAlvy in 1871 until he moved to Lansing in 1904 to serve on the Michigan Supreme Court for a three-year term.² He married Barbara Bassler of Ann Arbor on December 9, 1872, in their hometown. They had six children, five of whom survived him along with his wife after his unexpected death in Lansing, Michigan, on July 9, 1915, due to heart disease.

Aaron and Barbara built a then-state-of-the-art home in Manistee for the “comfort of the family and quality of work and material, rather than a flashy showiness.”³ Here is a photograph of the home, which was



described as a red wood structure with a large, carved oak door, and hand-polished, beautiful grain oak wood throughout the library, staircase and above the

fireplace. The home accommodated “children’s apartments” and servants’ rooms.

Twenty-eight years after moving to Manistee, Justice McAlvy returned to Ann Arbor to teach at the University of Michigan Law Department as a non-resident lecturer for five years. What did Justice McAlvy do during those twenty-eight years in Manistee? He was a private practitioner, served as the city attorney for three terms, held the position of prosecuting attorney for one term, was a supervisor for two terms, and had the unique distinction of being the deputy collector of customs for two terms. He was also the circuit judge by appointment from 1878–79 and 1901–2. Although he was elected for a six-year circuit court term in 1901, he resigned after three years because he was elected to the Michigan Supreme Court for a three-year term in the election that increased the bench from five to eight members. Here is a photo of the courthouse where he served as a circuit court judge in Manistee.⁴



Justice McAlvy seemingly had fond memories of his time as a student in the Michigan Law Department. In 1912, he hand-wrote a letter on Michigan Supreme Court letterhead⁵ to a former classmate at the University of Michigan Law School to generate interest in a

class reunion. He noted the reason to plan the reunion soon, “The old boys having been crossing the divide quite fast since 1908...” Hopefully, he was able to plan and attend that reunion.

After winning two more elections to the Michigan Supreme Court, Justice McAlvay died from a heart attack on July 9, 1915. Barbara went to wake him up in the morning and found him unconscious. The news of his unexpected death sent shock waves throughout the legal community. Governor Ferris said, “The state of Michigan has lost a valued public official and a citizen of the highest standing...Justice McAlvay was a man who was loved by all...including his associates and the bar in general. His honesty and sincerity won for him a place in the hearts of citizens of Michigan that will long be remembered.”⁶

Also described as a judge in whom trust could be placed for studious consideration of issues placed before him and for impartial and sound rulings upon them, he is most remembered for the opinion he wrote for the court in the Fort Street Railway Rental Case, *City of Detroit v Detroit United Ry*, 172 Mich 136, 137 N.S. 64(1912). The case involved the City of Detroit’s request to set terms and conditions for the continued operation of the Detroit United Railway on the city’s streets, its franchises and rights having allegedly expired. The Railway denied its franchise expired and refused to pay \$200/day for the use of the city’s streets. The Court held that the franchise expired, the Railway was trespassing on the City’s streets and the City had the “absolute and unquestioned right at any time to compel the defendant company to vacate the streets upon which these franchises have expired, and to require it to remove its property therefrom within a reasonable time, and, if necessary for that purpose, to enforce its rights by a writ of assistance from this court.”

The case went all the way to the Supreme Court of the United States and was affirmed. That ruling is attributed to Justice McAlvay’s exhaustively careful, sound reasoning, his solid work and “sturdy adherence to right and justice.”⁷

It is uplifting that Justice McAlvay applied his legal talent in the relatively rural community of Manistee for nearly three decades, and that the Michigan Su-

preme Court had on its bench a justice from such a community. Delivering legal services to rural Michigan and securing geographic diversity amongst leaders in the law were likely as big an issue at the turn of the 20th century as they were at the turn of the 21st century and continue to be today.

Endnotes

¹ Obituary, courtesy of Bentley Historical Library, publication unknown.

² Justice McAlvay was elected in the election that expanded the Supreme Court bench from five to eight members.

³ *Manistee News Advocate*, November 23, 1985 article by Steve Harold.

⁴ Courtesy of the Manistee County Historical Museum.

⁵ His colleagues on the bench at the time were Joseph Moore, CJ, Joseph Steere, Flavius Brooke, Charles Blair, John Stone, Russell Ostrander, and John Bird. The clerk was Charles Hopkins.

⁶ Obituary, publication unknown, courtesy of Bentley Historical Library.

⁷ Obituary, courtesy of Bentley Historical Library, publication unknown.

“Portraits of Justice” is a biographical series written about historic Michigan Supreme Court by the Society’s Board of Directors.



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SAVE THE DATE: 7 P.M., FRIDAY, OCTOBER 28, 2022

JOHN VOELKER: ANATOMY OF A WRITER

Law School Atrium

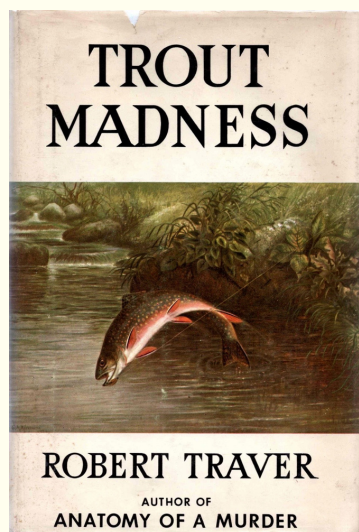
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651 E. Jefferson Avenue, Detroit

Prosecuting attorney. Candidate for Congress. Michigan Supreme Court Justice. "Quietly mad" trout fisherman. Author of Anatomy of a Murder & many other books about the law, life in the U.P., and trout fishing. Please join us as Justice Voelker's longtime friend, attorney Frederick M. Baker Jr., reflects on this Michigan writer's life and works.

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The Michigan Supreme Court Historical Society, a non-profit 501(c)(3) corporation, collects, preserves, and displays documents, records, and memorabilia relating to the Michigan Supreme Court and the other Courts of Michigan, promotes the study of the history of Michigan's courts, and seeks to increase public awareness of Michigan's legal heritage. The Society sponsors and conducts historical research, provides speakers and educational materials for students, and sponsors and provides publications, portraits and memorials, special events, and projects consistent with its mission.

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To watch this year's luncheon and hear this speech as well as the report from President Carl Herstein and Chief Justice McCormack's welcome from the Court, please visit our website at

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