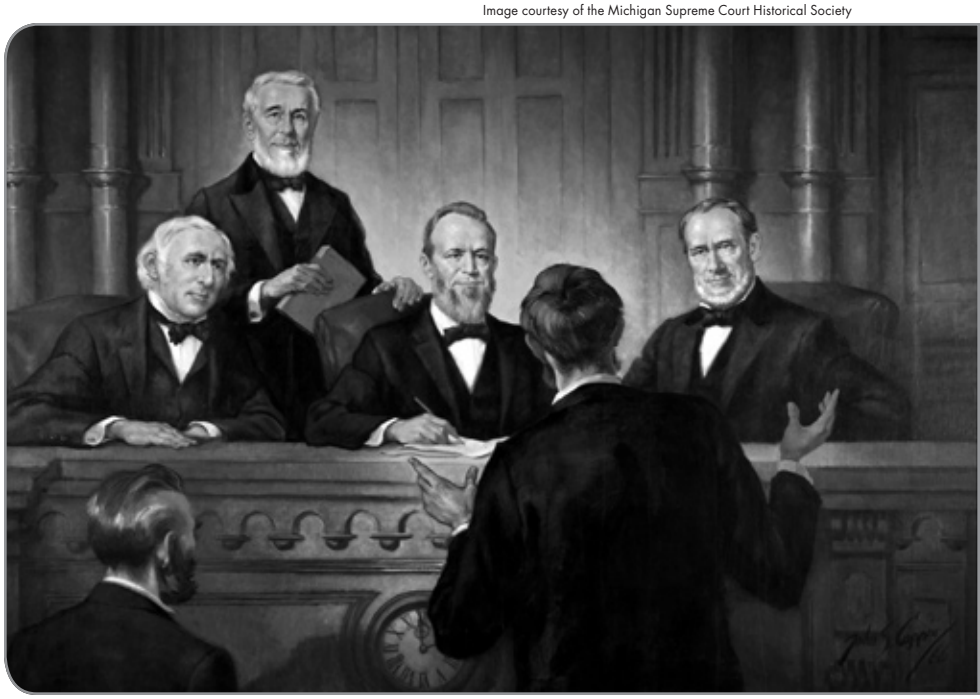
The *Workman* Case

Racial Equality in Nineteenth-Century Michigan

18 Mich 400 (1869)

Image courtesy of the Michigan Supreme Court Historical Society



Compilation painting of the "Big Four" donated to the State Bar of Michigan in 1972.

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.[1] 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." Slavery denied people these basic rights, but a former slave ("freedman") might enjoy no rights other than being out of the control of his former master. "Civil rights," held by citizens, included a wider range of rights, including the right to make civil contracts (including marriage), to inherit and bequeath property, and to have access to the courts to enforce these rights. Beyond these were "political rights," such as the right to vote, hold office, and to serve on juries and in the militia. Above all were "social rights," the right not to be discriminated against in places of public accommodation (restaurants, theaters, hotels, railroads) or in

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.[2]

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."[3] 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.[4] 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.[5]

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."[6] 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."[7]

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."[8]

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.[9]

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 district, with "full power and authority to make by-laws and ordinances relative to the regulation of schools, and relative to anything that may advance the interests of education, the good government and prosperity of the free schools in said city, and the welfare of the public concerning the same."[10] Dr. Zina Pitcher, the

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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."[11] 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.[12]

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 Christiancy, Cooley and Graves filled out what came to be called the "Big Four," the most renowned bench in Michigan Supreme Court history, from 1867 until 1875.[13]

Image courtesy of the Michigan Supreme Court Historical Society

Official Court portrait of Benjamin F. Graves

Benjamin F. Graves came from New York to Battle Creek and became a Michigan circuit court judge in 1857, serving briefly on the old Supreme Court, which was composed of circuit court judges. In 1866 he resigned from the Court because of his frail physical constitution. But the next year the voters returned him to the new Supreme Court, where he served until his retirement in 1883. Described as "mild and self-effacing," Graves "enjoyed the fondness of his colleagues." Despite his physical frailty, he lived to be almost 90.[1]

1. Shelly, *Republican Benchmark: The Michigan Supreme Court, 1868–75,* Mid-America 77 (1995), p 104.

The *Workman* case was a rather straightforward one. Workman claimed that the 1867 legislation requiring equal access applied to Detroit and that to exclude black pupils from the benefits of public education was not a reasonable "regulation." The school board denied these claims and, among other arguments, emphasized that segregation served the interests of public order. The board's lawyers said, "There exists among a large majority of the white population of Detroit a strong prejudice or animosity against colored people, which is largely transmitted to the children in the schools, and this feeling would engender quarrels and contention if colored children were admitted to the white schools."[14] "The jurisdiction of the board is a large and populous city, comprehending many conflicting and antagonistic elements," the board members continued. "They are the best judges, and are and should be the sole judges of what is the best method of harmonizing and directing these elements so that they will not clash."[15]

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.

Negative 94.263, Archives of Michigan Lansing

John Bagley, future governor, and others brought suit against the Detroit school board.

Negative 7434.42, Archives of Michigan Lansing

Fannie Richards was a teacher at Detroit's first black school, which was housed in the Second Baptist Church.

Photo by Brittany West

The Second Baptist Church, which still stands at 441 Monroe Street in Detroit.

Before the day of the *Workman* decision, John Bagley and Fannie Richards prearranged a signal that would let her know the outcome of the case. Fannie, a pioneering black school teacher who had opened a private school for black children in Detroit in 1963, worked as a teacher in Detroit's segregated Colored School No. 2. As a teacher who passionately believed in desegregation, and one of several liberal-minded citizens who helped finance the Workman lawsuit, she had a large stake in the Court's decision. If the decision was favorable, John Bagley, future Michigan governor and fellow funder of the suit, would wave a white handkerchief out the window of the afternoon train. Richards and her pupils waited in suspense for the train to come. When it finally came, John Bagley was waving a white handkerchief. Fannie and the children cheered; they knew the Court had ended segregation in Detroit public schools. Fannie went on to become Detroit's first black teacher in the integrated school system.

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 54,000–51,000 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.

It is tempting to wonder how the history of the constitutional law of civil rights might have differed if Cooley had ever joined the U.S. Supreme Court. Cooley had a very broad and liberal view of the rights secured by the Fourteenth Amendment, which he expressed in his 1873 edition of Joseph Story's *Commentaries on the Constitution*. Addressing the amendment's guarantee that no state shall deprive any person of life, liberty, or property without due process of law, he wrote, "It should be observed of the terms life, liberty, and property, that they are representative terms, and are intended and must be understood to cover every right to which a member of the body politic is entitled under law.... [T]he guarantee is the negation of arbitrary power in every form which results in a deprivation of right. The word we employ to comprehend the whole is not, therefore, a mere shield to personal liberty, but to civil liberty, and to political liberty also so far as it has been conferred and is possessed."[1] Cooley might well have interpreted the Congress' intent in the Fourteenth Amendment as liberally as he did the Michigan legislature's intent in the 1867 school access act. He is usually depicted as one of the fathers of "substantive due process," a doctrine that served to protect property rights between 1890 and 1937, and which might have been applied (and sometimes was applied) to the rights of racial and ethnic minorities. On the other hand, Cooley was not a doctrinaire advocate of substantive due process, denied from the outset that the Fourteenth Amendment had revolutionized the American federal system, and moved in a more conservative direction in the 1870–1880s. Indeed, his lack of fidelity to the Republican Party is probably what kept him off the U.S. Supreme Court in the first place.[2]

1. Story, *Commentaries on the Constitution of the United States*, 4th ed, with notes and additions by Thomas M. Cooley (Boston: Little, Brown & Co, 1873), vol II, p 668. For a contrasting interpretation, see Paludan, *A Covenant with Death: The Constitution, Law, and Equality in the Civil War Era* (Bloomington: Univ of Ill Press, 1975), pp 252–270.
2. Story, *supra* at vol II, p 682.

treatment established residential patterns that left the city's schools segregated in fact (de facto).[26] This led to court-ordered integration via busing, a highly unpopular policy that accelerated "white flight" to suburbs or private schools. The United States Supreme Court placed limits on integration in the 1974 case of *Milliken v Bradley:* busing stopped at the city limits. In the meantime, Detroit lost over half of its population and 74 percent of its white students between 1967 and 1978. Today its public schools are only 6 percent white.

The judicial impact on integration of Michigan public schools in the nineteenth century makes an interesting comparison to the twentieth-century attempt. A strong case can be made that the nineteenth-century Michigan Supreme Court believed that for its decisions to be effective, it was necessary to be sensitive to the importance of acting in reasonably close accord with public opinion and legislative will. It can also be argued that the federal courts in the twentieth century were less considerate of majoritarian views and felt compelled to act without regard to the need for broad popular support. In both cases, there were significant limitations on what was accomplished. The shortcomings that resulted from the more recent approach have led many legal scholars to recognize the limits of judicial power in a democracy, a limitation that the Big Four well understood.[27]

FOOTNOTES

1. Stephenson, Jr., *Integration of the Detroit Public School System During the Period 1839–69,* Negro History Bulletin 26 (1962), p 23; Walker et al., *African Americans in Michigan* (East Lansing: Michigan State Univ Press, 2001), p 5; Dancy, *The Negro People in Michigan,* Michigan Historical Magazine 24 (1940), p 222; Chardavoyne, *The Northwest Ordinance and Michigan's Territorial Heritage,* in *The History of Michigan Law,* Finkelman & Hershock, eds (Athens, OH: Ohio Univ Press, 2006), pp 20, 87.
2. Hyman & Wiecek, *Equal Justice Under Law: Constitutional Development, 1835–75* (New York: Harper & Row, 1982); Fehrebacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford Univ Press, 1981). Cf. Norris, *A Perspective on the History of Civil Rights Law in Michigan,* Detroit College of Law Review (1996), p 569. [*Dred Scott v Sanford,* 60 US 393; 15 L Ed 691 (1857).]
3. *Report of the Select Committee* (Detroit: Bragg & Harmon, 1847), in *The Making of Michigan: A Pioneer Anthology,* Kestenbaum, ed (Detroit: Wayne State Univ Press, 1990), p 312.
4. *Id.*
5. Vander Velde, *The Michigan Supreme Court Defines Negro Rights, 1866–69,* in *Michigan Perspectives: People, Events, Issues,* Brown et al., eds (Dubuque: Hunt Publishing Co, 1974), p 106; Dunbar, *Michigan Through the Centuries,* 4 vols (New York: Lewis Historical Publishing Co, 1955), I: 289.
6. *Day v Owen,* 5 Mich 520 (1858).
7. Shelly, *Republican Benchmark: The Michigan Supreme Court, 1868–75,* Mid-America 77 (1995), p 115.
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 Blodgett,* 13 Mich 127 (1865). Martin dissented in this case, too.
10. *People ex rel. Joseph Workman v Board of Education of Detroit,* 18 Mich 400 (1869); Stephenson, *Integration of the Detroit Public School System,* p 25; Thrun, *School Segregation in Michigan,* Michigan History 38 (1954), pp 16–18.
11. *Workman, supra* at 408; Peebles, *Fannie Richards and the Integration of the Detroit Public Schools,* Michigan History Magazine (Jan/Feb 1981); Katzman, *Before the Ghetto: Black Detroit in the Nineteenth Century* (Urbana: Univ of Illinois Press, 1973), p 84.
12. *Workman, supra* at 400; Peebles, *supra.*
13. The phrase "Big Four" apparently originated in Herschel H. Hatch's memorial tribute to Justice Graves, *In Memoriam* Benjamin F. Graves, 143 Mich xxiii (1907).
14. *Workman, supra* at 406.
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.
19. Dunbar, *Michigan: A History of the Wolverine State,* 2d ed. (Grand Rapids: Eerdmans, 1970), p 467. Michigan permitted interracial marriage in 1883, and enacted a statute forbidding segregation in public accommodations when the federal Civil Rights Act was struck down. Norris, *A Perspective on the History of Civil Rights Law in Michigan,* p 577.
20. Jones, *The Constitutional Conservatism of Thomas McIntyre Cooley: A Study in the History of Ideas* (New York: Garland, 1987 [1960]), p 203; Shelly, *supra* at 102.
21. Cooley, *Michigan: A History of Governments,* 7th ed (Boston: Houghton Mifflin, 1895), p 328.
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.
27. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago: Univ of Chicago Press, 1991).