II. SLAVES, LAWS, AND COURTS
IN EARLY DETROIT AND MICHIGAN†
1701-1835

A. Slavery and the Law in Michigan

In early Michigan, Africans and Native Americans1 were enslaved in the Detroit settlement,1 which at the time spanned both sides of the Detroit River.2 On a smaller scale, slavery also was practiced in the northern fur trading posts at Michilimackinac.3 Black slavery existed during three distinct periods of governance in Michigan’s history: the French, 1701-1760; the British, 1760-1796; and the American, 1796-1837.4

In addition to dislocations caused by warfare among sovereign governments vying for control of the territory, the legal status of slavery was complicated by international treaties and laws that regulated changes in the region’s governance.5 These included the surrender of Montreal under the Articles of Capitulation of 1760; the Treaty of Paris, which ended the French-British struggle for the North American continent; and the Jay Treaty of 1794, which transferred possession of the Northwest posts from Great Britain to the United States.6 Notwithstanding the provisions of the Northwest Ordinance of 1787 that prohibited slavery in the area above the Ohio River between the Appalachian Mountains and

† Editor’s Note: After Professor Littlejohn submitted this article in 2016, internal problems at The Journal of Law in Society delayed its publication. During that delay, Dr. Tiya Miles, Professor of History at the University of Michigan, published DAWN OF FREEDOM AND SLAVERY IN THE CITY OF STRAITS (2017).

1. See William Loren Katz, Black Indians: A Hidden Heritage 7 (1986) for discussions about slavery within the Indian nations as well as the so-called Black Indians, i.e., “people who have dual ancestry or black people who have lived for some time with Native Americans.” Katz also documents the alliances between Native Americans and African slaves in armed conflicts against their common enemy, the colonists. Id. See also, e.g., Jack Forbes, Black Africans and Native Americans: Color, Race and Caste in the Evolution of Red-Black Peoples (1988); R. Halliburton, Jr., RED OVER BLACK: Black Slavery Among the Cherokee Indians (1977).


6. Id.
the Mississippi River, slavery was not abolished legally in Michigan until 1837 when the state’s first constitution officially ended involuntary servitude.7

Slaves, owned by Indians and the French, were reported in Detroit in 1701 when Antoine L. de la Mothe Cadillac became commandant of Detroit and Port Pontchartrain.8 During its early period, most of the slaves in Detroit were Indians.9 The transition to black slavery progressed slowly under the French and was not completed until after Detroit came under British rule in 1760.10

The first black slaves brought into Detroit were captured by the Indians in raids on Southern slave plantations and sold or traded to the French.11 Later, some slaves came with their masters who migrated from the South.12 A small number of slaves were purchased from Eastern slave-merchants as the following late eighteenth century letters from the trading firm of James Phyn and Alexander Ellice in Schenectady, New York illustrates:13

7. CASTELLANOS, supra note 4, at 42. For general discussions about the early slave history of Detroit and Michigan, see FARMER, supra note 2, at 344-48; McRAE, supra note 3; KATZMAN, supra note 5; Riddell, The Slave in Canada, 5 J. OF NEGRO HIST. 261 (1920); ARTHUR RAYMOND KOOKER, The Antislavery Movement in Michigan, 1796-1840 (1941) (unpublished Ph.D. dissertation, University of Michigan) (on file with Michigan State University Law Library); T. KNEIP, SLAVERY IN EARLY DETROIT (1938) (unpublished Masters Thesis, University of Detroit) (on file with Michigan State University Law Library).
8. CASTELLANOS, supra note 4, at 42.
9. Id. at 43.
10. Id. Taking slaves as the result of armed conflict was common within some Indian nations. Id. Indian slaves were generally referred as “Panis,” a derivative of Pawnee, a tribe that was frequently enslaved by other, more powerful, tribes. Id. See McRAE, supra note 3, at 159-62 (discussing black slavery in New France before the founding of Detroit in 1701).
11. CASTELLANOS, supra note 4, at 43.
12. Id.
13. JAMES PHYN & ALEXANDER ELLICE, PHYN & ELLICE & CO. [hereinafter PHYN & ELLICE] (unpublished letters) (on file with Buffalo & Erie County Historical Society) in FARMER, supra note 2, at 344 (showing the method of sale, prices for slaves as well as “the spirit of these olden times.”). See McRAE, supra note 3, at 163, (providing a description of trade routes used by the Phyn and Ellice firm.) A copy of a 1795 deed of sale of a slave in Detroit may be found in Pioneer Society of the State of Michigan, Sale of a Negro Man Pompey, 1 MICH. HIST. COLLECTION 417 (1877) reprinted in FORGOTTEN BOOKS (Michigan Historical Commission ed., 2013). For descriptions of slave trading in Detroit, see When Detroit was a Slave Center, DET. FREE PRESS, Dec. 13, 1908, at C5; and KNEIP, supra note 3, at 15-27.
Schenectady, 23rd August 1760
Mr. James Stirling, Detroit
Sir,

Your favor, 29th June, attending your order, we had the pleasure to receive, and immediately thereon J.P. made a jaunt to New York, with a view to be particular and expeditious in making up to the goods. We now enclose you Invoice per L-----, the loading of six boats is under the direction of James McDonald, who is engaged to proceed with them to Detroit. * * We have tried all in our power to procure the wenches and negro lads, but it's impossible to get any near your terms. No green negroes are now brought into this Province. We can purchase negroes from eighty pounds to ninety pounds, and wenches from sixty pounds to seventy pounds. If such will be acceptable, advise and you shall have them in the spring, and perhaps under, if we can meet with Yankees in the winter.

With great esteem, yours,
P. & E.14

Schenectady, 13 August 1770
Mr. Levy:
Sir,

We have received two negro boys; the oldest will do for Mr. Stirling, at Detroit, and its entered in our Order book. But we are entirely at a loss what to do with that fat-gutted boy, having orders for none such for any of our correspondents, and we don’t by any means want him for ourselves. * * Pray, are not bills of sale necessary with these African gentlemen?

Yours.,
P. & E.15

Schenectady, 22 March, 1771
Mr. Carpenter Wharton:
Sir,

14. Letter from Phyn & Ellice, to James Stirling, Detroit, Michigan (Aug. 23, 1760) (on file with Buffalo & Erie County Historical Society) in Farmer, supra note 2, at 344. References in the letters to “green negroes” apparently indicated slaves from the triangular slave trade between the New England states, Africa, and the West Indies or the “rum, slaves, and sugar and molasses routes.” Kneip, supra note 3, at 18-19. These slaves were preferred because of their prior “training” in the West Indies. Id.

15. Letter from Phyn & Ellice, to Mr. Levy (Aug. 13, 1770) (on file with Buffalo & Erie County Historical Society) reprinted in Farmer, supra note 2, at 344.
Upon your arrival at Philadelphia, please advise us by letter addressed
to the care of Mr. Samuel Franklin, Jun., if you can purchase for us two
negro lads from fifteen to twenty years, for about fifty pounds, New York
currency, each. They must be stout and sound, but we are indifferent about
their qualifications, as they are for a Frenchman in Detroit. * * *

Yours,
P. & E. 16

To Mr. John Porteous, Detroit:

Dear Sir,

We have contracted with a New England gentleman for some green
negroes to be delivered here the first of August, and then your wench will
be forwarded, together with a negro boy, in case she may some time
hereafter choose a husband. We apprehend he will be useful to you, or
advantageous about the sloop, or you can dispose of him as you find best.
The price is fifty pounds each.

Yours,
P. & E. 17

During their control of the region, the French maintained two practices
common to their slaveholding. First, French custom permitted and
encouraged manumission. 18 Second, the influence of the Catholic Church
gave French slaves rights and protections that were uncommon in the
British slave regime. 19 For example, a 1724 ordinance of Louis XV
required that slaves be educated and baptized in the Roman Catholic
faith. 20 French slaves also received other sacraments, were confirmed,
marrried and served as witnesses in religious ceremonies. 21 Notwithstanding secular laws to the contrary, “All men were equal in the
eyes of the church . . . The church, in claiming and protecting the soul of
the slave, reduced the absolute control the master could exercise over his

16. Letter from Phyn & Ellice, to Mr. Carpenter Wharton (Mar. 22, 1771) (on file with
Buffalo & Erie County Historical Society) reprinted in Farmer, supra note 2, at 344.
17. Letter from Phyn & Ellice, to Mr. John Porteous, Detroit, Michigan (date
unavailable) (on file with Buffalo & Erie County Historical Society) reprinted in Farmer,
supra note 2, at 344.
18. Castellanos, supra note 4, at 45.
19. Id.
20. Katzman, supra note 5, at 58. See also McRae, supra note 3, at 162, for church
records confirming slave baptisms at the Michilimackinac post.
Consistent with their non-secular standing as persons, French slaves had the right, which some exercised, to petition for their liberty in court.\textsuperscript{23} In 1763, French sovereignty over Detroit was transferred to Great Britain by the Treaty of Paris, which formally ended the French and Indian War.\textsuperscript{24} Earlier, in 1760, article 47 of the Articles of Capitulation of Montreal guaranteed that “the Blacks and Panis of both sexes shall remain in the possession of the French and Canadians to whom they belong, who shall be at liberty to keep them in the colony or sell them.”\textsuperscript{25} This provision, as a practical matter, continued French slavery under British rule.\textsuperscript{26} Under the British, Detroit prospered and its population increased.\textsuperscript{27} Slavery also increased sharply, going from 60 in 1765 to an all-time high of 300 in 1796.\textsuperscript{28} This rate of increase, however, paralleled the rate of change for the total population.\textsuperscript{29} By the terms of the 1783 Treaty of Paris, title to the Northwest Territory, which included Michigan, passed from the British to the United States.\textsuperscript{30} Actual American possession of Detroit did not occur, however, until July 11, 1796\textsuperscript{31} when the British withdrew following execution of the Jay Treaty on November 19, 1794.\textsuperscript{32} The Jay Treaty contained a provision guaranteeing to the British that “[a]ll Setlers [sic] and traders Shall

\begin{itemize}
\item 22. Id.
\item 23. CASTELLANOS, supra note 4, at 45.
\item 24. Id. at 46.
\item 25. Id., citing 1 LE R. P. L. LE JEUNE, DICTIONNAIRE GÉNÉRAL DU CANADA 599 (1931).
\item 26. CASTELLANOS, supra note 4, at 46.
\item 27. Id. at 47.
\item 28. Id.
\item 29. Id. See also infra notes 34 and 64 (noting additional population information).
\item 30. From 1796 to 1802, Michigan was a part of the Northwest Territory; from 1803 to 1805, it was included in the Indiana Territory, and in 1805, the Michigan Territory was created with Detroit as the seat of the Territorial government and the name Michigan was applied to the area for the first time. See DICTIONARY OF AFRO-AMERICAN SLAVERY 546-49 (Randall M. Miller & John David Smith eds., 1988) [hereinafter MILLER & SMITH], for a concise history of slavery in the Northwest Territory.
\item 31. CATLIN, supra note 2, at 92.
\item 32. See FARMER, supra note 2, at 266. The British resisted giving up the area following the Revolutionary War because of the importance of fur trading. KOOKER, supra note 7, at 17-18. Michilimackinac did not come into American possession until October 1796. Id. at 18. Other military posts that surrendered after the Jay Treaty was signed were Niagara, Oswego and Miami on the Maumee. CATLIN, supra note 2, at 90. John Jay, the treaty’s principal negotiator, was the first Chief Justice of the United States.
\end{itemize}
Continue to enjoy unmolested all their property of every Kind.”

This provision protected the British settlers’ property rights in their slaves.

After 1796, slavery declined under American governance as many British residents moved to Canada, taking their slaves with them. Earlier, on May 31, 1793, while Michigan was still under British rule, the legislature of Upper Canada, then the central government for Detroit, enacted a law intended to abolish slavery gradually. This statute “to prevent the further introduction of Slaves, and to limit the terms of Contracts for Servitude within this province,” provided that slaves could not be imported and that children born of slave mothers after the enactment’s effective date would become free at age 25 years; but those who were legally enslaved in 1793 would remain slaves until their deaths. Some British slave-owners considered the Canadian law more favorable than the anti-slavery provision in Article Six of the Northwest Ordinance of 1787. Article Six provided:

There shall be neither Slavery nor involuntary Servitude in the said territory otherwise than in the said territory otherwise than in the punishment of crimes, whereof the party shall have been duly convicted; provided always that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and converted to the person claiming his or her service as aforesaid.

While the Article apparently was intended to abolish slavery totally, this objective was not achieved in the Territory or in Detroit. Unofficially, Article Six appeared to have been generally ignored, “[o]ur

17. Kooker, supra note 7, at 39, citing 1 Transactions of the Supreme Court of the Territory of Michigan, 1805–1814, 387 (William W. Blume ed., 1935) [hereinafter Blume 1]. In Dennison v. Tucker, the Territorial Supreme Court of the Michigan Territory affirmed that this provision included slaves as property. Id. at 36 citing Blume 1 at 385-95; see also Cohn, Constitutional Interpretation and Judicial Treatment of Blacks in Michigan Before 1870, 1986 Detroit C. L. Rev. 1124 (1986); see infra pp. 24-26 (discussing Dennison v. Tucker).

33. Kooker, supra note 7, at 39-40, citing Blume 1, supra note 17, at 387.

34. See Catlin, supra note 2, at 101. Prior to the post’s surrender, the population of Detroit was about 2,200 including 178 black and Indian slaves. Id. The departures, primarily into Canada, dwindled the population to about 500. Id. Detroit did not again reach a population of 2,200 until 1805. Id.

35. Kooker, supra note 7, at 38-90.

36. Id. at 38-39.


ancestors paid but little attention to it, for whenever a spruce negro was brought [in] by the Indians he was sure to find a purchaser at a reasonable price.”

As late as 1802, elected delegates from the Territory petitioned Congress to suspend the Ordinance for ten years. Congress refused. However, continued agitation and resistance as well as additional petitions from slave interest resulted in Territorial Governor Arthur St. Clair interpreting Article Six to mean that the extension of slavery in the Territory was prohibited, but those slaves already present would remain their masters’ property indefinitely.

Undoubtedly, the ambiguous enforcement of legislation intended to abolish slavery in the Territory was a bitter disappointment for the slaves. A few attempted to gain their freedom through habeas corpus proceedings. Many escaped and took advantage of the unusual legal status of slavery in the adjacent territories of Michigan and Upper Canada. Since both regions prohibited the introduction of new slaves, any slave escaping from one side to the other was considered free. “It became, indeed, a custom which tried the patience of citizens of both nations. Furthermore, it bought the vexatious fugitive slave problem into bold relief and forced it before the Territorial Supreme Court for early adjudication.”

In the early nineteenth century, many runaway slaves from Canada were reported in Detroit. However, after Canada abolished slavery, it became a haven for escaped American slaves and the traffic in fugitive slaves through Michigan and Detroit was one way into Canada.

On its human, non-legal side, slavery in Michigan, when compared with the practice in America’s South was always decidedly smaller and less brutal. This milder version of the “peculiar institution” was due in part to its French, rather than British, origins and to an economy that was dominated by fur trending and small farming rather than large plantations.

39. Id.
40. See Farmer, supra note 2, 345.
41. Id.
42. See Kneip, supra note 7, at 5-6.
43. Castellanos, supra note 4, at 52.
44. Id.; See also discussion infra pp. 14-15.
45. Castellanos, supra note 4, at 52.
46. Id.
47. Kooker, supra note 7, at 28-29; see infra notes 109, 112 and 118 for discussions of the fugitive slave cases.
48. Katzman, supra note 5, at 62.
49. Kooker, supra note 7, at 50.
50. Id. at 12.
51. See supra text accompanying notes 18-23.
Fur trapping was inconsistent with an ignominious master-slave relationship. Trapping was highly transient and required close, interdependent companionship among those who ventured into the frontier. Trappers who acquired slaves more accurately engaged servants, many of whom were treated as companions. In Detroit, slaves were primarily domestic workers or laborers on small farms. Since a family-agrarian economy made separate housing for one or two slaves impractical, many slaves often shared dwelling space with their masters. As a result, relationships between slaves and masters included special privileges, uncharacteristic freedom of movement and, generally, created a version of the peculiar institution that was described as "benevolent." They were "treated more as servants or hired men than slaves." Large slaveholding was rare throughout Michigan’s slavery period.

With the exception of a few wealthy Detroiter’s, whose names remain prominent in Detroit and Michigan, e.g., William Macomb and Joseph Campau, most owners held only one or two slaves. Inasmuch as eighteenth century Michigan was primarily a hunting and trapping region, only a few settlements of any size existed. Accordingly, the white population was never large and the number of slaves, because of their limited use, fluctuated with the general population. For example, in Detroit, the number of slaves peaked at about thirteen percent of the total population by the end of the eighteenth century. Their numbers had ranged from 45 (8.7%) in 1706, a low of 33 (7.3%) in 1750, to a high of 300 in 1796 (13.6%) based on estimated total population of 2,200.

52. See KATZMAN, supra note 5, at 58.
53. Id. at 59.
54. Id. at 61.
55. Id.; see also KNEIP, supra note 7, at 10.
56. KATZMAN, supra note 5, at 63.
57. Id. at 61.
58. KATZMAN, supra note 5, at 61.
59. Macomb, a member of the mercantile firm of Macomb, Edgar & Macomb, held 26 slaves at his death in 1796. KATZMAN, supra note 5, at 61. Campau is reported to have owned as many as 10 slaves. KNEIP, supra note 7, at 10-11.
60. KATZMAN, supra note 5, at 60.
61. See id. at 56.
62. See CASTELLANOS, supra note 4, at 47.
63. Percentage based upon the estimated slave population found in Katzman, supra note 5, at 65, n. 11 and the total population of 2,200 located in CATLIN, supra note 2, at 101.
64. KATZMAN, supra note 5, at 65, n.11 (containing additional slave census numbers as well as total population data). The 13.6% percentage is based on Katzman’s estimate of slaves and the total population provided in CATLIN, supra note 2, at 101. The author has been unable to confirm otherwise the 300-slave count for 1796, which, based on the earlier numbers, seems high.
An actual census of Detroit was taken between July 16 and 20, 1782 by Arent S. De Peyster, a major in the King’s Regiment and, at the time, Commandant of Detroit. The detailed census, in addition to confirming the increase in slavery under British rule, provided other important information about “old” Detroit. Counted in the census were 2,012 inhabitants and 179 slaves, seventy-eight male and 101 “female do.” The ratio of male to female slaves was consistent with a slave system that used domestic servants more so than manual or field workers. The 179 slaves were held by seventy-eight families and five partnerships. In other words, in 1782, about one of every four families owned at least one slave, which made slavery in Detroit “about as common as in some parts of the South at the time.” Slave-owning families were of Scotch, Irish, English and French descent. Thirty-nine families owned one slave each, twenty-three owned two slaves, nineteen families owned between three and seven slaves, and two held eight slaves. An additional interesting census statistic was an inventory of 1,000 barrels of cider and 8,175 gallons of rum, a seemingly enormous amount for 2,000 people, which included 526 boys and 503 girls. During the prior year, the Detroit garrison had consumed 16,000 gallons of rum. “General Haldimand complained bitterly about the enormous quantities of rum used at Detroit. Of course a great deal of it found its way into the Indian councils.”

Even though Michigan slaves were treated differently than their southern brothers and sisters, slavery, which is intrinsically debasing, could never have been considered “benevolent,” Michigan slaves, similar to slaves elsewhere, were not acquiescent. They persistently sought...

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Katzman notes minor discrepancies in slave enumerations. Other sources confirm the inaccuracies. For example, in 1773, Katzman reports 75 slaves in Detroit. *Id.* For the same year, Farmer reports 96 slaves, Indian as well as African. *Farmer, supra* note 2, at 344. Kneip’s census data are similar to Katzman’s, but they require interpretation. Both, for example, report 32 slaves in 1830. Kneip’s figure ostensibly is for Detroit; Katzman’s for the Michigan Territory. As Katzman notes, the Michigan Territory was a much larger area than the current State of Michigan and only one of the 32 slaves was in what is now Michigan, the balance were in an area that is now the State of Wisconsin. *Katzman, supra* note 5, at 62.

65. HARLEY LAWRENCE GIBB, SLAVES IN OLD DETROIT, 18 Mich. Hist. Mag. 143, 144 (1934). (The original copy of the census is housed in the Canadian Archives at Ottawa.)

66. *Id.* at 144-45. The “female do” designation used by the census may have referred to “domestic.”

67. *Id.* at 146.

68. *Id.*

69. *Id.* at 144.

70. *Id.* at 145.
freedom by escape, usually across the Detroit River into Canada, through military service\textsuperscript{71} and, occasionally, in the courts.\textsuperscript{72}

Some local whites saw slavery differently. For example, a Michigan historian, Father James A. Girardin, in an often cited 1877 article, described late eighteenth-century Michigan as a state where “[e]very one lived in Arcadian simplicity and contentment. The negro was satisfied with his position, and rendered valuable services to his master, and was satisfied with his position, and rendered valuable services to his master, and was ever ready to help him against the treacherous Indians.”\textsuperscript{73} In return for such servile fidelity, “[t]he master once attached to his ‘Sambo’, a great price would have to be paid to buy him.”\textsuperscript{74} This idyllic condition was attributed to the absence of abolitionists and, apparently, natural law absence of abolitionists and, apparently, natural law advocates. “There was no Wendell Phillips nor any [William] Lloyd Garrison,\textsuperscript{75} nor any ‘higher law doctrine,’ expounded in those days to disturb the mind of the slave or the slaveholder.”\textsuperscript{76} Father Girardin’s opinion that an abolitionist movement did not significantly affect Michigan was as incorrect, without doubt, as were his views on slavery within the state. In fact, Michigan and Detroit were important Midwestern centers for well-organized and activist anti-slavery groups.\textsuperscript{77}

By the turn of the nineteenth century, the sales of slaves in Michigan had declined sharply. Contributing to the decline was the uncertainty over slavery in the Territory, as rights of ownership were being challenged in court.\textsuperscript{78} In fact, bills of sale began to include provisions assuring prospective buyers that the slaves they purchased were born in the

\textsuperscript{71}. Slaves who served in the military were freed. Katzman suggests that since armed blacks created risks that few American governments were willing to take, enlistments of blacks from Detroit showed the high esteem in which they were held by whites. \textsc{Katzman, supra} note 5, at 62-63.

\textsuperscript{72}. See \textit{infra} at note 118 and accompanying text.

\textsuperscript{73}. Girardin, \textit{supra} note 38, at 415. Girardin’s article was first read before the Detroit Pioneer Society on September 27, 1872. The Pioneer Society of the State of Michigan had appointed a committee of historians to prepare for publication the early history of Michigan, “given by the Pioneers themselves.” Their first volume appeared in November, 1876.

\textsuperscript{74}. \textit{Id.} at 416.

\textsuperscript{75}. Phillips and Garrison were leading American abolitionists. Garrison was the editor of the anti-slavery weekly journal, The Liberator. He founded the New England Anti-slavery Society in 1831 and the American Anti-Slavery Society (AAS) in 1833. Phillips, a lawyer, was a dominant force in the AAS. As the country’s foremost anti-slavery orator, he was known as “abolitionism’s golden trumpet.” See \textsc{Miller & Smith, supra} note 30, at 285-87, 571-73.

\textsuperscript{76}. Girardin, \textit{supra} note 38, at 415.

\textsuperscript{77}. See discussion \textit{infra} note 76.

\textsuperscript{78}. \textsc{Kneip, supra} note 7, at 24.
Territory during the British rule so that their ownership would be protected by the Jay Treaty. In 1800, the country’s first black lawyer was yet a half-century away, and an additional quarter-century would elapse before a black attorney first appeared in a Michigan court. Accordingly, Michigan blacks, slave as well as free, depended upon white lawyers to assert and protect their legal interests. Few lawsuits were filed on behalf of Michigan slaves. The two slave cases that were decided in 1807 and discussed in the next section show, however, that when in court, both slaves and slave-owners were represented well.

In addition to their in-court appearances, Michigan lawyers were also counsellors and out-of-court advocates for slaves as well as slave-owners. The following letters illustrate these roles. The first is excerpts from a lengthy letter written by prominent Detroit attorney, Solomon Sibley, to a Canadian slave-owner, James Woods, who was seeking to recover a four-year old boy and his mother, who had escaped to Detroit. The second letter, from Attorney A. W. J. Hill to Jacques LaPell, Esq., threatened a lawsuit on behalf of a slave family. Both letters relied on the Federal Constitution and the Northwest Ordinance of 1787:

> [T]he Constitution of the United States makes provision [fugitive slave clause, Art. V, Sec. 2, Par. 3] that where a person deserts from one State into another, from whom Services are lawfully demandable, in the State from which he deserts, the claimant shall not thereby loose [sic] his claim. But [he] may pursue the fugitive and on proof of the point reclaim and take such fugitive back . . . . But Sir, These provisions are internal regulations of our Govt. and only applicable to the different parts of our Confederation, and therefore cannot be construed as to embrace your case.

> As this ordinance [Ordinance of 1787] is an Act of the United States Govt. It absolutely binds the Territorial Govts and in many instances is considered in the nature of a Constitution. . . . If slavery is prohibited within the Territory of Michigan, it follows that no sale can be made

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79. Id. at n.34, citing Charles St. Bernard, *Deed of Sale of a Young Negro Girl to Henry Berthelet*, October 4, 1799. The sale took place in Detroit. KOOKER, supra note 7, at 25.

80. Solomon Sibley was admitted to practice before the Supreme Court of the Territory of Michigan in 1805 and appeared in at least 158 of the court’s cases. BLUME 1, supra note 17, at 41.
of the slave therein, to vest any right of property in the purchaser.

. . . As the Mother has brought her son with her into this Territory and as the Child is within the years of nurture, I do not see any method to be adopted by which he could be separated [sic] from his Mother. The term apprenticeship has an appropriate definition. I do not see how you could bring the Child within it.  

Detroit, 5th of June, 1805

Sir:

Anthony Smith, a blackman, has applied to me to release (to) him, his wife and children from slavery. He says you hold them as slaves. As you must be sensible as well as myself, that slavery is prohibited, the Ordinance which forms this territory, you cannot hold them as such. By giving his wife and children to him now, you will save yourself much trouble and expense. If you refuse I shall immediately commence suit, which will be expensive to you and will surely recover them in August.

I am very respectfully
Yours servant
A.W.J. Hill
Attorney for the Plaintiff

Michigan slaves eventually fell into three groups: those who were owned by the French prior to 1765 and claimed as property under the Treaty of Paris of 1763; those owned by the British and claimed as protected property under the Jay Treaty of 1794; and those who were brought into Michigan from jurisdictions where slavery was lawful. Ownership of the latter two classes of slaves was disputed and, as a result, two important cases concerned with those categories came before the Supreme Court of the Territory of Michigan early in the nineteenth century. These cases, which are discussed in the next section, came late in the institution’s Michigan history, but they contributed to the decline and the eventual abolition of slavery in Michigan.

81. Kooker, supra note 7, at 31-32, and references therein. The letter is undated, but clearly precedes the Supreme Court of the Territory of Michigan decision in Denison v. Tucker, which was in agreement with Sibley’s opinion. See discussion supra at note 82.

82. Kneip, supra note 7, at 48 citing Blume 1, supra note passim 17.
B. Slaves in Court: Judge Woodward and the Supreme Court of the Territory of Michigan

The enabling legislation for the Northwest Territory created a three-judge court with common-law jurisdiction. The court held its first session on August 30, 1788, and after the Territory came under American control, it was convened annually in Detroit. At this time, many cases were conducted in French, the language spoken by a large portion of litigants, witnesses and jurors. Cases had to be translated into English, sentence by sentence, which "made the proceedings very tiresome."

On July 30, 1805, Congress adopted a governmental plan for the new Territory of Michigan, which previously was a portion of the Territory of Indiana. Detroit was designated the Territory’s seat of government, and its governing body was comprised of five officials. Appointed territorial governor by President Jefferson was General William Hull, a veteran of the Revolutionary War, and a lawyer and legislator from Massachusetts. Appointed in turn were Stanley Griswold, as Secretary of the Territory, and three territorial judges - - Frederick Bates, John Griffin and Augustus Elias Brevoort Woodward. Woodward was a personal friend of President Jefferson. Only Bates, an Ohio native, had lived in Detroit. Griffin and Woodward were from Virginia. Within this legislative body, that became known as the “Governor and the Judges,” Judge Woodward, who frequently quarreled with the Governor and other legislators, became a dominant force. "There was but one such man in all the United States, and for nearly twenty years he was a central figure at Detroit." Woodward literally changed the physical as well as the judicial “landscape” of Detroit and the Territory. Among his numerous accomplishments was his draft of

83. Farmer, supra note 2, at 178.
84. Id. For a short period, 1800-1805, the court functioned under the Indiana Territory. For discussion, see Blume 1, supra note 17, at xvii.
85. Farmer, supra note 2, at 178.
86. For discussion, see Catlin, supra note 2, at 120-21; and Lathrop, Some Unreported Opinions of a Territorial Judge 1805 to 1823, 21 L. Libr. J. 66, 66-67 (1928).
87. Catlin, supra note 2, at 120-21. Woodward was born in New York where he attended Columbia College. At age 21, he moved to Virginia, where he “read the law,” and in 1799, he began practicing law. He moved to Washington, D.C. after his close friend Thomas Jefferson became President in 1801 and remained there until he was appointed to his post in the new Michigan Territory. W. Dunbar, Michigan: A History of the Wolverine State 194 (1965). For a complete biography of Judge Woodward, as well as descriptions of frontier Detroit and its residents in the early nineteenth century, see F. Woodford, Mr. Jefferson’s Disciple: A Life of Justice Woodward (1953).
88. Farmer, supra note 2, at 181.
the original plan for Detroit following its destruction by fire in 1805, naming the City of Ypsilanti, and in 1817, the drafting of a grandiose act that embodied his plans for Michigan’s first university.

On July 24, 1805, the Territorial Legislature created the Supreme Court of the Territory. Its first session was held on July 9, 1805, and Judge Woodward was appointed the court’s first chief judge. Judge Bates was also appointed in 1805; Judge Griffin in 1806. Bates resigned in 1806, and Judge James Witherell replaced him in 1808. From 1808 until 1824, Woodward, Griffin and Witherell were judges in and over the Territory of Michigan. The court performed two judicial roles. It was a United States court with broad general jurisdiction, and also the territorial court with appellate jurisdiction over the several territorial district courts.

Early descriptions of the court were sometimes humorous and portray a loosely organized, often whimsical, bench, which was given to gross favoritism and which met at irregular hours, “sometimes in the council house and sometimes at the clerk’s office; sometimes at a tavern and sometimes on a woodpile.” As to the tavern, Silas Farmer reports that the following story appeared in the Detroit Gazette:

In September, 1820, the court frequently held its sessions from 2 p.m. until 12, 1, and 3 o’clock in the morning of the next day; and cases were disposed of in the absence of both clients and counsel. During these night sittings, suppers of meat and bottles of whiskey were brought into court, and a noisy and merry banquet was partaken at the bar by some, while

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89. CATLIN, supra note 2, at 122-24. The plan, which was not adopted, was an adaptation of Pierre Charles L’Enfant’s plan for the national capital at Washington, D.C. It featured wide streets, circular parks and open “campuses,” and is described in DUNBAR, supra note 88, at 195-97.

90. CATLIN, supra note 2, at 281. Ypsilanti was founded in 1823 and notwithstanding protests by property owners was named by Woodward in 1825 to honor Prince Demetrius Ypsilanti of Greece.

91. Id. at 223-25. The university, which Woodward named “Catholepistemiad” (his second choice was the “University of Michigania”), opened in Detroit on Bates Street between Larned and Congress. His educational system, which featured centralized control under a group of “directors” (professors), became the framework for Michigan’s system of education as well as the University of Michigan, which opened in Ann Arbor in 1837. Id. at 226-27.


93. BLUME 1, supra note 17, at 14.

94. See id. at xvii-xliv for excellent descriptions of the Supreme Court and the Territory’s district courts, their jurisdictions, procedures, judges and officers.

95. FARMER, supra note 2, at 179, quoting from an article appearing in the Detroit Gazette on October 25, 1825.
others were addressing the court in solemn argument, and others presenting to the judges on the bench, meat, bread, and whiskey, and inviting them to partake.96

Judge Woodward, given his considerable talents, energy and his unique, aggressive and often overbearing personality, became the court’s central figure. Woodward, the person, was indeed unusual. He was described as a learned, scholarly, but eccentric genius; a bizarre character of the first rank, one “that only Dickens could properly portray.”97 His personal habits and hygiene were also described as rank. He reportedly bathed rarely, but was known to do so while sitting in a chair outdoors during a rain. His “slovenliness [was] so extreme, as to almost defy description.”98 Tall, angular, lean and sallow, Judge Woodward was a bachelor who “was extremely fond of the society of ladies.”99 He also enjoyed airing an astonishing vocabulary: “Words of six syllables suited his purpose much better than words of one syllable.”100 On the bench, he quarreled frequently with Judge Witherell, and was once characterized as a pedantic, “a wild theorist, fit only to extract sunbeams from cucumbers.”101 This view of Judge Woodward seems one-sided or only partially correct. If Woodward was an implacable sesquipedalianarian, he was undoubtedly, also a visionary in a frontier community where neither his visions nor his cultured erudition were appreciated or understood. His writings have been described as “well written and intelligent manuscripts” and, apparently, he was responsible for all the written opinions of the Territorial Court during his tenure.102 While considered impatient and often impractical, he was regarded as an able judge.103 “The opinions of Judge Woodward reveal a knowledge of law and procedure that was both extensive and penetrating.”104

96. Id. From Farmer’s account, it appears the story was published on January 3, 1823.

97. Id. at 181. Farmer devotes the bulk of his chapter on the Supreme Court of the Territory to commentary about Judge Woodward.

98. Id.

99. Id. at 182. Descriptions of Woodward by his contemporaries suggest he may have been a prototype of Irving’s Sleepy Hollow schoolmaster, Ichabod Crane. WOODFORD, supra note 88, at 22.

100. CATLIN, supra note 2, at 121 and 223.

101. T. COOLEY, MICHIGAN 149-50 (1885). Cooley attributes the remark to one of Woodward’s “subsequent associates.”

102. Lathrop, supra note 87, at 67 citing Witherell, The Territorial and State Judges, 4 MICH. 9,9 (1857). Lathrop examined all the files of cases heard by the court between 1805-1837 and found no opinions by either Judge Griffin or Judge Witherell. Id. at 68. Judge Woodward was primarily responsible for writing the first code of laws adopted by the territorial governing board, known as the Woodward Code. DUNBAR, supra note 88, at 197.

103. DUNBAR, supra note 88, at 200.

104. BLUME 1, supra note 17, at liv.
Notwithstanding many public complaints, including petitions to the Congress and the President, about his judicial conduct and other follies, Judge Woodward remained on the bench and clearly controlled the court during its first nineteen years. Woodward’s dominance was aided by Judge Griffin, who was described as honest, but “constitutionally inert, wanted firmness of character and disliked responsibility.” Judge Griffin, who characterized himself as a “Woodward drudge,” always sided with Judge Woodward, thus giving Woodward an unfailing majority in his many disputes with Judge Witherell.

Judge Woodward decided two important slave cases. The first, *Denison v. Tucker*, came before the court on a writ of habeas corpus and was heard by Woodward on September 26, 1807. The petitioners were a family of slave siblings - - Lisette (Elizabeth), James, Scipio and Peter Denison Jr. All the Denisons, with the exception of Peter Jr., were born prior to 1793. Their parents had been purchased in 1784 by an Englishman, William Tucker. The respondent, Catherine Tucker, William’s widow, was a British citizen residing in the Territory.

The *Denison* decision was complicated legally because of the petitioners’ dates of birth and their owner’s British citizenship. Judge Woodward had to determine the legality of slavery in the Territory in 1807 as affected by the 1763 Treaty of Paris, the Northwest Ordinance of 1787, the 1793 statute of the Province of Upper Canada, the 1794 Jay Treaty and the United States Constitution.

Mrs. Tucker argued that her detention of the Denisons was lawful under the Jay Treaty, notwithstanding the anti-slavery provision of the Northwest Ordinance of 1787. Woodward agreed. Apparently, his agreement was legal, not personal, as early in his lengthy opinion, he expressed a strong aversion to slavery:

In this territory Slavery is absolutely and peremptorily forbidden. Nothing can reflect higher honor on the American government than this interdiction. The Slave trade is unquestionably the greatest of the enormities which have been perpetrated by the human race. The existence at this day of an absolute & unqualified Slavery of the human Species in the United States of American is universally and justly considered their greatest and deepest reproach.

109. See discussions *infra*, at notes 14-17.
110. Blume 1, *supra* note 17, at 386.
Judge Woodward, after discussing the abolition of slavery in England, traced carefully the history of slavery in Michigan during the French, British and American regimes. He noted that slavery under the French lasted until 1763 and was continued by the British until 1796 when the United States asserted its sovereignty over Michigan through the Jay Treaty. Accordingly, he concluded that the 1793 statute enacted by the Province of Upper Canada, which gradually abolished slavery, was entitled to full recognition because the Jay Treaty protected the property rights of British settlers. Such property, Woodward acknowledged, included “human species.” Further, Woodward held the federal constitution required that provisions in a duly ratified treaty prevailed over any contrary local laws, such as the Northwest Ordinance of 1787.

The end result of Woodward’s legal analyses was a recognition of the three mandates in the 1793 British law: slaves living on May 32, 1793 and in possession of British settlers in the Territory on July 11, 1796 remained slaves for life; those born after May 31, 1793 and prior to the establishment of American the System of jurisprudence remained slaves until age twenty-five years; and the children of slave mothers in the second category were free from birth pursuant to the Ordinance of 1787, unless they were fugitive slaves from another state. Since none of the Denisons had protected status under the 1793 Upper Canada law, Judge Woodward ordered that they “be restored to the possession of Catherine Tucker.”

On October 23, 1807, less than a month after the Denison decision, In re Richard Pattinson came before Judge Woodward. With different case
facts, Woodward had a fresh opportunity to address the continuation of slavery in the Territory and the legal bases for his Denison opinion.

The petitioner, Richard Pattinson, sought a warrant to apprehend his claimed lawful property, namely, “the bodies of Jane, a Mulatto woman, of about twenty years of age, and Joseph [Quinn], a boy of about eighteen years . . . .” Unlike the British settler-slaveowner in Denison, who resided in the Territory, Pattinson, a wealthy merchant, lived in the Town of Sandwich, Canada. His “property” had escaped from Canada to Detroit and had refused to return to his service.

The petitioner argued that both the law of nations and the common law recognized alien ownership rights in personal property and, accordingly, both required the return of such property to “its” lawful owner. Further, Pattinson claimed that since both the United States and Great Britain recognized slaves in North America as property, the Jay Treaty protected British subjects in the full use and enjoyment of their property. Woodward rejected each of the petitioner’s arguments and gave several legal bases for his decision. First, under the law of nations, property of foreign citizens should be restored, but there was no legal obligation to do so when the property was persons. Thus, the matter was governed instead by principles of comity. Second, the common law did not control property rights in human beings and since such rights derogated the laws of nature, they had to be statutory. Last, Judge Woodward held that because the Ordinance of 1787 forbade slavery in the Territory, no right of property existed in humans. Exceptions were made, however, for slaves held by British settlers in the Territory on July 11, 1796 [under the Jay Treaty] and those who were fugitive slaves from other American states or territories.

because of his pro-British and anti-American activities during the Revolutionary War. Woodford, supra note 88, at 88-90.

Other slave cases heard by the territorial court were: Abbott v. Jones, 1805 (contract action for failure to pay for a “negro woman”), Blume 1, supra note 17, at 51-52; In re Toby, a Panis, 1807 (Habeas corpus action: Toby was returned to his master), Id. at 100, 405; and In re Hannah, a Negro Woman and Thomas, a Mulatto Boy, 1809 (Habeas corpus action: the court found that Hannah and Thomas were not slaves), Id. at 163.

For discussion of criminal cases involving slaves that were heard by the territorial courts and evidence that disproportionately harsh sentences were given slaves, see Kneip, supra note 7, at 27-29. Special punishments meted out to slaves was demonstrated by a statute enacted by the governor and judges of the Territory on November 14, 1815 that provided: the “court, or justices before whom any Negro, Indian or Mulatto slave should be convicted of any offense, not punishable by death, should have authority to impose, instead of punishment by the Act prescribed, not extending to life or limb, such corporal punishment as such court or justices in their discretion should direct.” Id. at 29, citing Judge John W. Stone, Marquette County and the Upper Peninsula, III Mich. Hist. Mag. 352 (1919).

118. Blume 1, supra note 17, at 414.
119. See id. at 414-15.
120. Id. at 415-16.
In support of the principle “that a right of property cannot exist in the human Species,” Woodward, as he did in Denison, cited with approval Lord Mansfield’s decision in Sommersett v. Stewart. Woodward, noting that safe harbors must exist, offered the following invocation:

A human being escaping from chains and tyranny could find no place in the whole earth to rest. Go where he would the power and the arm of the tyrant would still reach him. Man, the monarch of the earth, would be able to find no place upon its surface where he could breathe the air of freedom.

It was also imperative that the remedy sought by the petitioner be distinguished from the national fugitive slave laws, which compelled the return of slaves to their owners even when captured in free states. Woodward concluded that the right of such return among nations, unlike domestic jurisdictions, depended upon reciprocal international agreements. Finding no such reciprocity with Canada, Woodward decided against the petitioner.

Pattinson finally settled the vexing slave problem that had festered between Canada and the Michigan Territory. Exemplifying the tension over slavery was the July 31, 1806 letter from Governor Hull to Secretary Madison:

Much sensibility in Upper Canada is excited on account of their slaves. Some have recently left their masters and come into this territory. Their masters have applied to me to have them apprehended by authority and sent back. I did not consider myself authorized to comply with this request . . . . I learn they are about making a statement to the British Minister on the subject. . . . My wishes would be in favor of restoring them to their duty.

Woodward, himself, obviously thought his Pattinson opinion was of national importance. He sent a copy of his opinion to the Postmaster of New York City, and on January 12, 1808, received a reply advising him that it had been printed in both the American Citizen and the Republican Watchtower, and that it very generally meets the approbation of our bar.
Pattinson had immediate, local and far-reaching ramifications. It helped solidify the abolition movement in Detroit and beyond. It “was widely acclaimed throughout the northern states and was popular in Detroit, where antislavery sentiment partially involved the common man’s jealousy of wealthy people who owned them.”

Appropriately, one example of the decision’s local impact, involved the Denison family, the unsuccessful petitioners in Denison v. Tucker. Since the lack of reciprocity prevented the return of runaway slaves, the Denisons fled into Canada and claimed sanctuary. With no legal means to force their return, the Denisons lived free in Canada. Later, they returned to Detroit and were reported to have “lived unmolested for the rest of their lives . . . .”

An ironic slave anecdote involved Judge Woodward. Apparently, he owned a slave up to about the time he left the Territory in 1824. “One of the last slaves in Detroit was an aged Pawnee servant belonging to Judge Woodward, who enjoyed full liberty for several years before his death.”

If Woodward’s ownership of a slave was inconsistent with his eloquent indictments of slavery in the Denison and Pattinson opinions, it was, on
the other hand, a certain confirmation of his irascible and arrogant character. Catlin reported a slave working in Detroit as late as 1930, “a husky African slave,” named Hector, owned by General John R. Williams.  

The antislavery feelings evident in Michigan in 1807 endured and grew. The Pattinson decision was a final assurance that slavery in Michigan would soon disappear. The time limits set by the 1793 Canadian statute were soon to expire, and no prospect for new slaveholding was forthcoming. The Northwest Ordinance, which Cooley described as “a great and notable event . . . a precedent for putting the government distinctly on the side of freedom,” was taking effect after the failed attempts to repeal Article Six. New settlers to the Territory, including many from New York and other New England states, understood that Michigan was to be free of slaves. Therefore, those owning or wanting slaves didn’t come.  

Following voluntary manumissions and escapades to Canada, only seventeen slaves were reported in Detroit and a total of twenty-four in the Michigan Territory in the 1810 census enumeration. Only one slave was believed to have been in Michigan at the time of the 1830 census. In 1835, when Michigan adopted its first constitution and formally abolished slavery, three slaves were reported in the state — two in Monroe County and one in Cass County.  

Detroit was to become a major terminus for the Underground Railroad. It became the passageway across the Detroit River into Canada and freedom for thousands of black slaves escaping the American South.  

Coterminous with the end of slavery in Michigan was a nascent struggle by blacks for equality. As the laws and cases discussed in the next section make clear, although a majority of whites in Michigan opposed slavery and fugitive slave laws, most did not equate black freedom with equality. As laws and events show, not only were black residents in Michigan denied the fundamental rights of citizenship, they were unwelcomed neighbors.

131. Catlin, supra note 2, at 288.
133. See Katzman, supra note 5, at 62, n.14 and census data references contained therein.
134. Id.
135. Id.