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THE INDEPENDENT DEVELOPMENT OF CIVIL RIGHTS IN MINNESOTA: 1849-1910†

INTRODUCTION

During the early development of civil rights in Minnesota, blacks constituted the state's largest minority. Despite comprising only one percent of the state's population, or perhaps because of it, blacks in Minnesota made greater advances in civil rights than those in states with larger black populations. From the creation of the Minnesota Territory in 1849 until the beginning of the twentieth century, blacks made rapid progress toward equality. While this movement was not always one of success nor a model for the nation, the civil rights movement in Minnesota during this period had a vitality not seen again until after World War II.

I. THE 1850S: THE TERRITORIAL PERIOD AND THE ABOLITIONIST MOVEMENT

In 1849 Congress created the Minnesota Territory and formed its government.¹ Congress provided that the citizens of the territory would enjoy the same rights and privileges as citizens of the newly formed state of Wisconsin, which had entered the Union a free state.² Secured both by the law of Wisconsin and the Missouri Compromise, which since 1820 had barred slavery from the northern area of the Louisiana Purchase,³ Minnesota was destined to enter the Union a free state.

In 1850 only thirty-nine blacks lived in the Minnesota Territory.⁴ Minnesota was isolated from the slave states and preoccupied with its own development. As a consequence, the issue of slavery was a low priority for most Minnesotans. Since runaway slaves did not come as

† The author wishes to acknowledge Donna M. A. Bello of the Minnesota Historical Society, without whose enthusiasm, encouragement and patience this article would not have been possible.

1. Act of Mar. 3, 1849, ch. 121, 9 Stat. 403.

2. *Id.* ch. 121, § 12, 9 Stat. at 407.

3. Act of Mar. 6, 1820, ch. 22, 3 Stat. 545.

And be it further enacted, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state, contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited.

Id. ch. 22, § 8, 3 Stat. at 548.

4. The 1850 census reported only 39 blacks in Minnesota. E. SPANGLER, *THE NEGRO IN MINNESOTA* 22 (1961).

far northwest as Minnesota, the passage of the Fugitive Slave Act in 1850 had no immediate impact on the territory.⁵ The Underground Railroad was never active in the territory or state of Minnesota. The situation was the same in the neighboring states of Iowa, Illinois and Wisconsin, due to their sparse settlements, expansive distances, and far northern locales.⁶

The catalyst that finally inflamed the abolitionist movement in Minnesota was the passage of the Kansas-Nebraska Act of 1854.⁷ The act declared the Missouri Compromise "inoperative" as to the prohibition of slavery.⁸ The act also left the territories of Nebraska and Kansas to decide for themselves whether to be slave states.⁹ Until this time, Minnesota had been a Democratic stronghold. However, the passage of the Kansas-Nebraska Act shocked the slumbering anti-slavery sentiment in the state and caused many Democrats to abandon their former allegiance to join with the Whig minority in opposing any further spread of slavery.¹⁰

In July 1855, a territorial convention was held at which the Minnesota Republican party was formed upon a strong anti-slavery foundation.¹¹ In 1856 the United States Supreme Court's decision in *Dred Scott v. Sandford*¹² made slaves the property of their master regardless of where they resided or traveled. This landmark decision appalled many and fueled the fires that launched the Republican party into predominance throughout the North.

On May 11, 1858, Minnesota was admitted to the Union.¹³ The state constitution, adopted in 1857, guaranteed freedom to its in-

5. Act of Sept. 18, 1850, ch. 50, 9 Stat. 462. The Act vastly increased the ability of slave holders to apprehend escaped slaves who had gone to free states or territories. It also gave federal marshals virtually unlimited power to arrest runaway slaves when acting pursuant to a warrant. *Id.* ch. 50, § 5, 9 Stat. 462. Anyone interfering with a marshal could be jailed and prosecuted. *Id.*

In 1854 the Wisconsin Supreme Court took up the vanguard in blunting the Fugitive Slave Act. In *In re Booth*, the court released two men who had been imprisoned for aiding an escaped slave, declaring that the defendants had committed no illegal act and that the Fugitive Slave Act violated Wisconsin's sovereignty. 3 Wis. 157, 176 (1854).

6. W. BREYFOGLE, *MAKE FREE* 79 (1958).

7. Act of May 30, 1854, ch. 59, 10 Stat. 277.

8. *Id.* ch. 59, § 1, 11 Stat. 277.

9. *Id.* ch. 59, § 14, 11 Stat. 283.

10. See Gilfillan, *The Early Political History of Minnesota*, 9 MINN. HIST. SOC'Y COLLECTIONS 167, 171 (1901).

11. *Id.* A significant number of Irish and German Catholics, although opposed to slavery, joined the Democratic party because of the Republican party's "scarlet mark of Know-nothingism." Klement, *The Abolition Movement in Minnesota*, 32 MINN. HIST. 15, 15 (1951).

12. 60 U.S. 393 (1856).

13. Act of May 11, 1858, ch. 31, 11 Stat. 285.

habitants.¹⁴ This guarantee was interpreted to apply only to citizens of the state, however, and had no effect in abating the Fugitive Slave Act.¹⁵ The Hennepin County Anti-Slavery Society was formed in late 1859 and lobbied vigorously for the passage of a "personal liberty" bill.¹⁶ The bill was similar to laws passed in several other Northern states and would have made the "exercise [of] ownership over any human being" a penal offense in Minnesota.¹⁷ Due largely to the lucrative tourist trade from slave-holding states, the bill failed.¹⁸

Despite the Supreme Court's decision in *Dred Scott*,¹⁹ courts in Minnesota often granted slaves freedom while visiting the state. In one famous case, the Minnesota Constitution was used to free a visiting slave who had been brought with her master to vacation on Lake Harriet in 1860.²⁰ When the slave let it be known that she wanted her freedom, local abolitionists lent their assistance by obtaining a writ of habeas corpus to free her.²¹ At trial the slave owner's attorney relied upon *Dred Scott*,²² while the abolitionists' attorney rested his case on the state constitution's guarantee of freedom to all inhabitants.²³ The judge granted the writ and informed the petitioner she was free to go where she pleased.²⁴

One of the most popular and successful organizers of the abolitionist movement in Minnesota was Jane Grey Swisshelm. She became known throughout the country as the firebrand editor of the *St. Cloud Visiter*.²⁵ Swisshelm had acquired her editorial skills and a

14. MINN. CONST. art. I, § 2.

No member of this State shall be disenfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State otherwise than the punishment of crime, whereof the party shall have been duly convicted.

Id.

15. Act of Sept. 18, 1850, ch. 50, 9 Stat. 462, 463.

16. See E. SPANGLER, *supra* note 4, at 32.

17. *Id.* See generally Prucha, *Minnesota's Attitude Toward the Southern Case for Secession*, 24 MINN. HIST. 307 (1943).

18. See E. SPANGLER, *supra* note 4, at 31; Prucha, *supra* note 17, at 307-08.

19. *Dred Scott v. Sanford*, 60 U.S. 393 (1856).

20. See E. SPANGLER, *supra* note 4, at 29-30. "This incident . . . became one of the most celebrated cases of its kind in Minnesota, if not in the Northwest." *Id.* at 29.

21. *Id.* at 30.

22. *Dred Scott*, 60 U.S. at 393.

23. See E. SPANGLER, *supra* note 4, at 30. See also MINN. CONST. art. I, § 2.

24. See E. SPANGLER, *supra* note 4, at 30. Some citizens strongly opposed the decision. *Id.* at 30-31. A number of local hotel keepers and businessmen voiced their strong opposition to the decision because they feared the loss of the wealthy Southern visitors. A small recession did in fact hit St. Anthony when slave holders were reluctant to visit. *Id.* at 31.

25. See Klement, *supra* note 11, at 16-17.

knack for publicity while working for abolitionist newspapers in Pittsburgh.²⁶ As soon as Swisshelm reached St. Cloud, she turned her presses against the pro-slavery factions in the Minnesota Territory. Her efforts against slavery upset powerful Democrats and Southern interests in the territory. This eventually led to the destruction of her presses by a pro-Democrat mob in 1858.²⁷ These threats had little effect on Swisshelm, and she continued to write and lecture to an ever-growing audience.²⁸

II. THE 1860S: THE CIVIL WAR AND ITS AFTERMATH

Minnesota remained outside the mainstream of black migration and settlement during the Civil War. In 1860 blacks accounted for only 259 of the state's inhabitants.²⁹ This proportion was extremely small when compared with the number of blacks in other Northern states, such as Indiana with 11,428 blacks, Illinois with 7,628 blacks, Wisconsin with 1,171 blacks, and even Iowa with 1,069 blacks.³⁰

In spite of the state's small number of blacks, abolitionist sentiment was strong in Minnesota politics. The Republican party championed the abolitionist movement and began to establish Minnesota's liberal reputation by winning an "overwhelming victory" in the 1859 elections.³¹ Governor Alexander Ramsey was considered "one of the most radical" Northern governors.³² "Minnesota had the most liberal law for the enfranchisement of immigrants."³³

26. *Id.* at 16. Swisshelm was among the many immigrants from the Northeast who came to Minnesota during this period. See *THEY CHOSE MINNESOTA, A SURVEY OF THE STATE'S ETHNIC GROUPS* 58 (Holmquist ed. 1981) [hereinafter *THEY CHOSE MINNESOTA*]. These settlers brought with them the influence of the growing antislavery movement. This influence was directly responsible for the development of the abolitionist movement in Minnesota. See Klement, *supra* note 11, at 15.

27. See *The St. Cloud Visiter*, May 13, 1858, at 1, col. 1. A note was left in the demolished offices of the *St. Cloud Visiter* which read:

The citizens of St. Cloud have determined to abate the nuisance of which you have made the "Visiter" a striking specimen.

They have decided that it is fit only for the inmates of brothels, and you seem to have had some experience of, the tastes of such persons.

You will never have the opportunity to repeat the offence in this town, without paying a more serious penalty than you do now.

By order of the Committee of Vigilance.

Id., May 13, 1858, at 1, col. 4.

28. See Klement, *supra* note 11, at 18.

29. *Id.* at 40. Four counties accounted for over half of this population: "Ramsey (70), Dakota (39), Le Seuer (20), and Winona (19)." *Id.* at 40-41.

30. *Id.* at 41.

31. Prucha, *supra* note 17, at 308.

32. Klement, *supra* note 11, at 20.

33. Johnson, *The Election of 1860 and the Germans in Minnesota*, 28 MINN. HIST. 20, 20 (1947).

Nevertheless, the Republican party still believed slavery was a matter to be left to state constitutions and that slavery could exist in the confines of a state that allowed it.³⁴ The Republican-dominated legislature remained undecided over what civil rights should be extended to the state's black citizens. For example, the 1860 legislature was confronted with two widely divergent bills; one sought to ban the immigration of free blacks into the state, while the other asked that blacks be given equal suffrage. Both failed.³⁵

With the outbreak of war in April 1861, Minnesota responded to Lincoln's call for troops by mustering in 950 men before the end of the month.³⁶ Over the next four years Minnesota gave 21,982 men to the Union cause, seventy-two of whom were black.³⁷ Most of these recruits were inspired by patriotism rather than anti-slavery sentiment, and fought for the preservation of the Union.³⁸ Most Minnesotans, even those who opposed slavery, did not believe slavery could or should be eradicated from states where it already existed.³⁹

Such sentiments prevailed throughout the Union. Even President Lincoln was reluctant to resort to emancipation. In his first inaugural address, Lincoln stated: "I have no purpose, directly or indirectly, to interfere with the institution of slavery in the states where it exists. I believe I have no lawful right to do so, and I have no inclination to do so."⁴⁰ On several occasions early in the war, Lincoln reversed the proclamations of field commanders who declared the regions under their charge to be free.⁴¹

As the war drew on, Lincoln received increasing criticism from both Republican and Democratic newspapers in Minnesota. The vociferous editor of the Faribault Central Republican strongly criticized Lincoln for protecting slavery.⁴² Abolitionist Jane Grey Swisshelm abandoned Lincoln and labeled her former idol a "vacillating weakling."⁴³ Democratic party leaders attacked the president as "injudicious" and one of his generals as "a most consummate jackass."⁴⁴

34. See Prucha, *supra* note 17, at 313.

35. See THEY CHOSE MINNESOTA, *supra* note 26, at 74.

36. See 2 W. FOLWELL, A HISTORY OF MINNESOTA 77-79 (1924).

37. See *id.* at 339-40.

38. See Trener, *Votes for Minnesota's Civil War Soldiers*, 36 MINN. HIST. 167, 170 & n.11 (1959).

39. See Prucha, *supra* note 17, at 310, 313.

40. 6 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 5 (1900) (Lincoln quoting himself from an earlier speech).

41. See Klement, *supra* note 11, at 23, 26-27. For example, General David Hunter had declared *all* persons in Georgia, Florida and South Carolina free. *Id.* at 26.

42. See *id.* at 23.

43. See *id.* at 26 (quoting The St. Cloud Democrat, May 29, 1862).

44. *Id.* at 25, 27.

The St. Paul Press denounced Lincoln's proslavery policy.⁴⁵

Lincoln justified his reluctance to emancipate the slaves of the South as follows:

My paramount object in the struggle is to save the Union, and is not either to save or to destroy slavery. If I could save the Union without freeing any slave, I would do it; and if I could save it by freeing all the slaves, I would do it; and if I could save it by freeing some and leaving others alone, I would also do that. What I do about slavery and the colored race, I do because I believe it helps to save this Union; and what I forbear, I forbear because I do not believe it would help to save the Union. I shall do less whenever I shall believe what I am doing hurts the cause, and I shall do more whenever I shall believe doing more will help the cause. I shall try to correct errors when shown to be errors, and I shall adopt new views so fast as they shall appear to be true views.⁴⁶

Nevertheless, a month after Lincoln issued this statement he issued a preliminary proclamation of emancipation.⁴⁷ The final version became effective on January 1, 1863.⁴⁸ Its passage brought the dreams of the nation's abolitionists into reality.

As blacks arriving in Minnesota soon discovered, however, emancipation did not result in full equality. For example, in May 1863, when a large contingent of escaped slaves arrived in St. Paul, Irish dock workers harassed them until the steamboat carrying them sailed upriver to Fort Snelling.⁴⁹ A previous group of black laborers had been treated in a similar fashion upon their arrival in St. Paul.⁵⁰ Settled blacks also faced hostility. For example, local residents ousted the superintendent of a Sunday school at Lake Como for teaching white and black children together.⁵¹

Following the Civil War, a new push began in Minnesota for increased civil rights for the state's black citizens.⁵² In 1865 voters

45. *Id.* at 27.

46. 2 COMPLETE WORKS OF ABRAHAM LINCOLN 16 (1894).

47. See 12 Stat. app. i-ii (Sept. 22, 1862).

48. 12 Stat. app. ii-iii (Jan. 1, 1863). The proclamation read:

And by virtue of the power and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated states and parts of states are, and henceforward shall be, free . . .

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind and the gracious favor of Almighty God.

Id. at app. iii.

49. See THEY CHOSE MINNESOTA, *supra* note 26, at 75; E. SPANGLER, *supra* note 4, at 51-52. There were 218 escaped slaves, 100 of whom were women and children. The Irish dock workers were "disturbed about this rival labor force." *Id.* at 51.

50. See THEY CHOSE MINNESOTA, *supra* note 26, at 75.

51. See E. SPANGLER, *supra* note 4, at 35.

52. See Ridge, *Ignatius Donnelly in Congress, 1863-1869*, 36 MINN. HIST. 173, 174 (1959). In Washington, D.C., Ignatius Donnelly, Minnesota's vocal representative,

narrowly defeated a referendum which would have enfranchised black males.⁵³ Voters again narrowly rejected the proposal in 1867.⁵⁴ The proposal finally passed by a margin of about nine thousand votes in late 1868.⁵⁵

In January 1869, Minnesota's black population held a convention in St. Paul and formed a statewide society called the State Organization of the Sons of Freedom. At this convention, Governor William R. Marshall announced the enactment of universal male suffrage in the state:⁵⁶

In the name of forty thousand of the free electors of this commonwealth, I welcome you to liberty and equality before the law. In the name of the State of Minnesota, which has relieved itself of the reproach of unjust discrimination against a class of its people, I welcome you to your political enfranchisement.⁵⁷

The Minnesota Legislature also enacted a statute which effectively eradicated discrimination and segregation in Minnesota's public schools. The statute withheld state funds from any school that classified "the scholars therein with reference to color, social position or nationality, or . . . set apart the children so classified into separate schools without their consent and the consent of the parents or guardians of such children."⁵⁸

Major events were taking place at the federal level as well. In December 1865, Congress abolished slavery with the enactment of the thirteenth amendment.⁵⁹ Congress guaranteed due process of law with the fourteenth amendment in July 1868⁶⁰ and guaranteed the right to vote without regard to race or color with the fifteenth amendment in February 1870.⁶¹ Later in 1870, Congress passed an

petitioned the House for a constitutional amendment to outlaw state laws which allowed discrimination on the basis of race or nationality. Congress rejected his petition, no doubt because Congress had attempted to give all citizens the same rights regardless of color in the Civil Rights Act of 1866 (Act of Apr. 9, 1866, ch. 31, 14 Stat. 27). *Id.*

53. See E. SPANGLER, *supra* note 4, at 39.

54. See MINNESOTA LEGISLATIVE MANUAL 1985-1986. The referendum was defeated 28,794 votes to 27,429. *Id.*

55. See *id.* at 44. Minnesota was not the only state to have problems with black suffrage. During the same period Connecticut, Colorado, Nebraska, Ohio, Michigan and Wisconsin all turned down proposals for black suffrage. See E. SPANGLER, *supra* note 4, at 39.

56. See Act of Mar. 6, 1868, ch. 56, 1868 Minn. Gen. Laws 149.

57. See E. SPANGLER, *supra* note 4, at 58. To make this announcement was particularly gratifying for Governor Marshall, one of the bill's principal supporters. *Id.* at 59.

58. Act of Mar. 4, 1869, ch. 4, 1869 Minn. Gen. Laws 7.

59. U.S. CONST. amend. XIII.

60. *Id.* amend. XIV, § 1.

61. *Id.* amend. XV.

act to enforce the fifteenth amendment,⁶² and in 1871 passed an act to enforce the fourteenth amendment.⁶³ These amendments established the legal basis for equality. The remaining task was to apply them.

III. THE 1870s: GROWING SELF RELIANCE

By 1870, blacks had gained equal access to public schools and the voting box, but remained a small minority in Minnesota. Only 759 blacks resided in the state, most in the urban areas of St. Paul and St. Anthony.⁶⁴ Since most were ex-slaves with few job skills, they were forced to live in substandard conditions in commercial districts where employment was readily available and rents were cheap.⁶⁵ St. Paul's commercial district was considered a particularly lawless area and included houses of prostitution and gambling dens. Due to unsanitary conditions, many suspected that cholera and smallpox outbreaks originated from this district.⁶⁶

Civil rights activity was almost nonexistent in Minnesota during the 1870s. One exception occurred in 1873 when a black Minnesotan named Henry W. Robinson initiated a discrimination suit against the Milwaukee and St. Paul Railway Company.⁶⁷ Robinson claimed his constitutional rights were violated when he was refused a seat on a first-class car because he was black.⁶⁸ After a two day trial the jury returned a verdict for the railroad.⁶⁹ Although black males had the vote, it remained evident that their small numbers had left them powerless to enforce the privileges and rights granted by the fourteenth amendment and by other enactments.

IV. THE 1880s: POLITICAL ACTION AND INTEGRATION

During the 1880s Minnesota was a much less hostile place for blacks to live than the Southern states.⁷⁰ In 1885 the Minnesota

62. Act of May 31, 1870, ch. 114, 16 Stat. 140.

63. Act of Apr. 20, 1871, ch. 22, 17 Stat. 13.

64. See *THEY CHOSE MINNESOTA*, *supra* note 26, at 74. Only 198 of 20,030 St. Paul residents were black. *Id.* at 74, 76.

65. See *id.* at 76.

66. See St. Paul Pioneer, Oct. 7, 1866, at 4, col. 2. In 1866 the city health inspector reported that he found 13 people sleeping in one room. *Id.*, May 31, 1866, at 4, col. 2.

67. See St. Paul Daily Press, May 15, 1873, at 4, col. 2.

68. See *id.* Robinson sought damages totalling \$1,800. *Id.*

69. See St. Paul Daily Press, May 17, 1873, at 4, col. 1. The case received no more attention in the standard press than a typical divorce case.

70. See Taylor, *John Quincy Adams, St. Paul Editor and Black Leader*, 43 MINN. HIST. 283, 291 (1973). Black Minnesotans had the right to vote and to hold public office. They also had more social interaction with whites than did Southern blacks. *Id.*

Legislature passed an equal rights and accommodations act,⁷¹ derived from a similar federal law passed in 1875.⁷² Minnesota's act guaranteed equal access to all public places, inns, and public conveyances without regard to race or color.⁷³ Since the black community lacked the financial or political might to combat such prejudice, the community depended upon the Republican party to be its guardian and benefactor. Blacks were able to hold public office within the state and the strong black commitment to the Republican party resulted in a few patronage positions.⁷⁴

By 1880 there were over 1,500 blacks in Minnesota. One third

71. An Act to Protect All Citizens in their Civil and Legal Rights, ch. 224, 1885 Minn. Gen. Laws 295.

72. Act of Mar. 1, 1875, ch. 114, 18 Stat. 335, 335-36.

73. Minnesota's Act read in pertinent part:

That all persons within the jurisdiction of the state of Minnesota shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges [sic] of inns, public conveyances on land or water, theatres and places of public amusements, restaurants and barber shops, subject only to the conditions and limitations established by law and applicable alike to all citizens of every race and color, regardless of any previous condition of servitude.

An Act to Protect all Citizens in their Civil and Legal Rights, ch. 224, 1885 Minn. Gen. Laws 296.

In 1865 Massachusetts was the first state to enact an equal accommodations act. M. KONVITZ, *A CENTURY OF CIVIL RIGHTS* 155 (1961). New York followed suit in 1874 with an act limited to public conveyances and places of amusement. *Id.* at 156. Other states apparently took no action for a number of years after 1875 because the federal civil rights act addressed equal accommodations on the federal level. In 1883, however, the U.S. Supreme Court declared the 1875 civil rights act unconstitutional in civil rights cases. *United States v. Stanley*, 109 U.S. 3 (1883). The Court held that Congress was unauthorized by either the thirteenth or fourteenth amendments to enact such far-reaching legislation. *Id.* at 11. States were left to fill the vacuum left by this decision. Konvitz, *supra*, at 157.

By the turn of the century, 18 northern and western states had adopted some form of equal accommodations legislation based closely upon the federal act. *Id.* at 157. In 1885, Connecticut, Iowa, New Jersey and Ohio all passed laws closely modeled after the federal act in the year following the civil rights cases. That same year, Colorado, Illinois, Indiana, Michigan, Nebraska and Rhode Island joined with Minnesota in enacting an equal accommodations act. Pennsylvania followed suit in 1887; Washington in 1890; Wisconsin in 1895; and California in 1897. *Id.*

Not until 1953 did Oregon adopt an equal accommodations act. Montana and New Mexico followed suit in 1955. Vermont and Maine waited until 1957 and 1959 to give minorities equal access to all accommodations. *Id.* By 1960, half the states had yet to fill the void left by the Supreme Court's civil rights decisions.

74. See Taylor, *supra* note 70, at 290-91. See also E. SPANGLER, *supra* note 4, at 80-82.

Some patronage positions became available to blacks in major cities in other states and a few blacks there were elected to local office on Republican tickets. See Fishel, *The Negro in Northern Politics*, 42 *MISS. VALLEY HIST. REV.* 465, 470 (1955). Cities in Minnesota lagged behind cities such as Cleveland, Chicago and Boston in electing blacks to local office. *Id.* While this may have been attributable to the small percentage of black voters in the state and the lack of adequate political training, a

lived in St. Paul, which was emerging as the cultural and social center for the black community.⁷⁵ As blacks made economic gains they abandoned the commercial district and reestablished themselves in other areas of the city.⁷⁶ Although some black enclaves existed, there was no sharp pattern of segregation of neighborhoods.⁷⁷

From St. Paul arose the first generation of black leaders. This group of men, few of whom had any extended formal education, took great strides in organizing and improving the status of the black community. James K. Hilyard was one of the first leaders to emerge. Arriving from Philadelphia in 1866, he went into business as a tailor and later moved into real estate and insurance. Hilyard was responsible for the organization of black Masonic lodges in St. Paul and Minneapolis in the late 1860s.⁷⁸

Hilyard gained a valuable ally in 1874 when Thomas H. Lyles moved to St. Paul and set up business as a barber. Lyles organized a literary society and became active in real estate and fraternal orders. He is believed to have been responsible for convincing the mayor to hire St. Paul's first black police officer in 1881.⁷⁹ Hilyard and Lyles were also behind the drive that resulted in an all-black fire company for St. Paul in 1885.⁸⁰ The two men joined forces in 1876 and 1880 to publish a newspaper for the black community, an enterprise for which they eventually recruited Frederick D. Parker from Washing-

decade passed before Minnesota made additional significant steps toward integration of the political process.

From this apex, blacks' loyalty to the Republican Party steadily diminished. See Lypset, *Roosevelt and the Protest of the 1930s*, 68 MINN. L. REV. 273, 288 (1983). Blacks were ultimately drawn into the Democratic Party in the 1930s with the New Deal. *Id.* at n.63. New issues of political reform, railroad booms, and industrialization were more pressing to the Republican Party, which did not see any further obligation to its black constituency after the passage of the Voting Rights Act of 1870. See Fishel, *supra*, at 468. See also Act of May 31, 1870, ch. 114, 16 Stat. 140.

75. See *THEY CHOSE MINNESOTA*, *supra* note 26, at 74-77.

76. See *id.* at 76. A surprising number of blacks owned their own homes. See *id.* at 77.

77. See *id.* at 76.

78. See *id.* at 79.

79. See *id.*; Griffith, *Blacks in the St. Paul Police Department*, MINN. HIST. 255 (1975). "The first black [police officer] for whom a record can be found was James H. Burrell, a former pullman porter, who was appointed to the St. Paul force on Oct. 25, 1892." *Id.* See also HISTORY OF THE POLICE AND FIRE DEPARTMENTS OF THE TWIN CITIES 106-07 (1899).

Although race distinction has not so far penetrated the St. Paul police service, James H. Burrell is at present the only colored man employed on the force. . . . As a police officer he has served continuously at the Rondo [Street] sub-station, winning the respect and confidence of his colleagues and the unstinted praise of his superior officers

Id. See also E. SPANGLER, *supra* note 4, at 61.

80. See *id.*

ton, D.C.⁸¹ Each of these men was deeply involved in a number of local clubs as well.⁸²

In 1887 prominent civil rights activist John Q. Adams became the editor of the *Western Appeal*.⁸³ The paper flourished under Adams' aggressive editorial style.⁸⁴ Adams used the paper to protest the inconsistencies in America's racial policy and to encourage self-respect and dignity among blacks.⁸⁵ In 1889 the *Western Appeal* became *The Appeal* and was billed as "A National Afro-American Newspaper." It was published in seven major cities, from Dallas to Chicago. *The Appeal* provided a new platform to black politicians and political ideals. *The Appeal* also advertised black businesses and recorded the events of black society in the cities it served.⁸⁶ Although Adams never ran for elective office in Minnesota, he did wield considerable political power as the unelected representative of black Minnesota. He firmly believed "[i]f we are citizens we must have civil rights. We'll accept nothing less."⁸⁷

While black Minnesotans advanced economically, politically, and educationally in the wake of the civil rights legislation of the 1870s and 1880s, the social status of most blacks had not significantly changed. In 1887 William Hazel, a black architect, sought a night's lodging in St. Paul. After being refused at one hotel due to his color, Hazel tried to get a room at another hotel. While admitting that the laws of the state prohibited discrimination in public accommodations, the clerk refused Hazel lodging. Hazel demanded to speak to the proprietor, who also refused him lodging and verbally assaulted him. Hazel protested his treatment and called a policeman. Hazel was arrested for drunken disorderliness, despite his sobriety, and brought to the city jail for the night.⁸⁸

The black community was outraged. John Q. Adams encouraged Hazel to sue and in a scathing editorial declared Hazel's fight was for "every colored man, woman and child in this city, each of whom

81. See *THEY CHOSE MINNESOTA*, *supra* note 26, at 79.

82. See *id.* Hilyard founded the Minnesota chapter of the black Masonic lodges in the 1860s. In 1875 Lyles became the first president of the Robert Banks Literary Society, "composed of men and women who met to discuss the philosophical and practical importance to the race." *Id.*

83. See Taylor, *supra* note 70, at 285-86. Adams had been invited to Minnesota from Kentucky in 1866 by James Hilyard. Adams had already gained a measure of success as the editor of the *Louisville Bulletin*. His initial duties in St. Paul were as an assistant editor to Frederick Parker on the *Western Appeal*. Parker left the paper in 1887. *Id.*

84. See *id.* at 288.

85. See *id.* at 288-90.

86. See *id.* at 287-88.

87. *Id.* at 291.

88. *Id.*

desires equal privileges to all, exclusive privileges to none."⁸⁹ Hazel filed suit for damages against the proprietors of the second hotel. Rather than suing under the 1885 state civil rights law, which had a damages cap of \$500,⁹⁰ Hazel brought a common law action seeking \$2,000. A jury awarded Hazel \$25 in damages plus \$19 in costs.⁹¹ To the black community the message was clear: the legislation had been passed but its enforcement remained far from realized.

Members of the black community concluded they would have to unite to protect themselves. The standard was raised by Adams' Western Appeal in October 1887.⁹² The paper proposed to hold a state convention to form an organization to protect blacks' civil rights. The convention was held in December in the hall of the Minnesota House of Representatives and resulted in the creation of the Minnesota Protective and Industrial League.⁹³

The League was not designed to be a political machine. Rather, it organized local committees to monitor civil rights infringements and promote projects intended to improve the quality of life.⁹⁴ The League's most ambitious project was to encourage blacks from the South to settle in Minnesota upon fifty thousand acres of government land the League proposed to secure.⁹⁵ Although this project never materialized, the organization of the League itself was a significant milestone for black Minnesotans.⁹⁶ The League was successful in attracting black professionals to the Twin Cities.⁹⁷

V. THE 1890s: TOWARD A NATIONAL MOVEMENT

As the national civil rights movement was stalemated by a resurgence of discrimination in the South, black Minnesotans maintained a relatively higher standard of living and a degree of success in civil rights actions during the 1890s. One such victory came in an application of Minnesota's 1897 civil rights law in Minneapolis.⁹⁸ The plaintiff was McCants Stewart, a black law student attending the University of Minnesota who would later become a prominent civil rights

89. Western Appeal, May 21, 1887, at 1, col. 1.

90. An Act to Protect All Citizens in their Civil and Legal Rights, ch. 224, 1885 Minn. Gen. Laws 296.

91. See Taylor, *supra* note 70, at 291.

92. See Western Appeal, Oct. 22, 1887, at 1, col. 2.

93. *Id.*, Dec. 24, 1887, at 1, col. 3.

94. See Taylor, *supra* note 70, at 292. See also Western Appeal, Dec. 24, 1887, at 1, col. 3. "The aim of the organization . . . is not so much to make war against fancied wrongs, but to encourage and assist the people to make good use of the rights and privileges which they have." *Id.*

95. See Taylor, *supra* note 70, at 292.

96. See *id.*

97. See THEY CHOSE MINNESOTA, *supra* note 26, at 78-80.

98. See Act of Apr. 23, 1897, ch. 349, 1897 Minn. Gen. Laws 616.

advocate in the Pacific Northwest.⁹⁹

In March 1898, Stewart had gone into John Flangstad's Central Avenue restaurant for a meal. After waiting forty-five minutes to get service while others were waited on, Stewart asked Flangstad if he was going to serve him at all. When Flangstad replied that Stewart could go elsewhere for his meal, Stewart replied, "I did not know I was in Georgia. I thought I was in the state of Minnesota where a colored man was entitled to the same rights as any other citizen."¹⁰⁰ Upon hearing the increasingly heated exchange between the two men, several patrons left their tables and gave their names to Stewart for use in prosecuting Flangstad. Flangstad was arraigned in the police court and charged with violating the civil rights statute.¹⁰¹

This was the first case brought under the amended state civil rights law.¹⁰² Following summation, the jury took only fifteen minutes to decide in Stewart's favor.¹⁰³ John Adams' Appeal praised the large number of black citizens who attended the trial and encouraged future solidarity, stating, "[a]nd there is where we should be all together, fight together, stand together and win together."¹⁰⁴

In the summer of 1898 a very different kind of fight attracted the attention of Minnesota civil rights activists. The United States had entered the war against Spain and among the first regular army units sent were four black regiments.¹⁰⁵ Since the Civil War, the army had maintained these regiments of exclusively black troops in which the

99. See Smith, *In the Shadow of Plessy: A Portrait of McCants Stewart, Afro-American Legal Pioneer*, 73 MINN. L. REV. 495, 502, 504-12 (1988). Stewart was the third black to graduate from the University of Minnesota Law School. The first was Frank Wheaton, who graduated in 1894. *Id.* at 500 n.21. The first native-born black to graduate from any Minnesota law school was John Hickman, who graduated from the St. Paul College of Law in 1907. See E. SPANGLER, *supra* note 4, at 77.

100. Minneapolis Journal, Mar. 3, 1898, at 6, col. 5.

101. See *id.* See also Minneapolis Tribune, Mar. 18, 1898, at 10, col. 4. Flangstad thought McCants Stewart had said something about "robbing him because he was a colored man." Several witnesses testified that Stewart said, "You think you will rub it in because I am a colored man." *Id.*

102. See Act of Apr. 23, 1897, ch. 349, 1897 Minn. Gen. Laws 616. Flangstad's defense was that, due to a poor understanding of the English language, he misunderstood what Stewart was saying and thought he was being insulted. The prosecution argued that Flangstad had made no attempt to wait on Stewart and had insulted the black man by saying, "I will not serve you. I hire the likes of you to take care of my bath." Minneapolis Tribune, Mar. 18, 1898, at 10, col. 4.

103. See The Appeal, Mar. 26, 1898, at 4, col. 1.

104. *Id.*, Mar. 19, 1898, at 4, col. 1.

105. See Minneapolis Journal, Mar. 28, 1898, at 6, col. 4. These regiments had an outstanding record of service and were second-to-none in the courage and professionalism they exhibited in battle. For a first hand account, see T. ROOSEVELT, *THE ROUGH RIDERS* (1899). The future president frequently voiced his admiration for these troops. *Id.*

officers were white.¹⁰⁶ The Appeal noted it was "adding insult to injury when the Afro-American who wishes to risk his life to defend his country is compelled to enlist in a separate company and then be obliged to serve under white officers. Let the officers be mixed. Let the men be mixed."¹⁰⁷

The election of 1898 brought some remarkable results for Minnesota's black voters. Frank Wheaton was elected to the statehouse as a representative, the first black elected to public office in Minnesota. Wheaton's election was remarkable because he won by a thousand vote margin in a district having about one hundred black residents out of a total population of 46,000.¹⁰⁸

Two days after Frank Wheaton was elected, the Minnesota Supreme Court issued its opinion in *Rhone v. Loomis*.¹⁰⁹ Now all but forgotten, the decision raised a storm of controversy in 1898 and severely damaged Justice William Mitchell's reputation in the black community.¹¹⁰

The events which formed the basis for the suit occurred in September 1897, just a few months after the passage of the amended Minnesota civil rights law.¹¹¹ Edward T. Rhone, a black man born a slave in Arkansas,¹¹² had lived in Duluth for ten years.¹¹³ He was invited by a friend, Thomas Shannon, known by Rhone from the local Republican headquarters,¹¹⁴ to defendant Robert Loomis' saloon for a glass of beer.¹¹⁵ According to Rhone, Loomis refused to serve him, stating "we don't serve colored people in here."¹¹⁶

At trial, the jury returned a verdict for Rhone for twenty-five dol-

106. See *Minneapolis Journal*, Mar. 28, 1898, at 6, col. 4. The volunteer regiments that recruited blacks, including the Minnesota regiment, were similarly composed. See *The Appeal*, May 21, 1898, at 2, col. 1; May 28, 1898, at 2, col. 1.

107. *The Appeal*, June 4, 1898, at 2, col. 3.

108. See *id.*, Nov. 12, 1898, at 2, col. 1. Wheaton was elected to represent the 42nd District. *Id.*

109. 74 Minn. 200, 77 N.W. 31 (1898).

110. See *The Appeal*, Nov. 19, 1898, at 3, col. 4.

111. Act of Apr. 23, 1897, ch. 349, 1897 Minn. Gen. Laws 616.

112. Paper Book at 11, *Rhone v. Loomis*, 74 Minn. 200, 77 N.W. 31 (1898) (No. 11048) [hereinafter "Paper Book"].

113. *Id.* at 12.

114. *Id.* at 10.

115. *Id.* at 13.

116. *Id.* Rhone testified that, as he stepped inside the door of Loomis' saloon, he stopped to speak with a black porter while Shannon continued to the bar. Rhone caught up with Shannon as Loomis was setting a beer on the counter. Shannon turned to Rhone and asked what he would like. Rhone responded that he wanted a beer, and Shannon placed ten cents, the price of two beers, on the bar and said, "Bob, give Rhone whatever he wants." Rather than respond, Loomis walked to the other end of the bar. After being refused service, Rhone turned to leave and suggested he and Shannon go elsewhere for a drink. Rhone swore that in his 10 years in

lars in damages, the statutory minimum.¹¹⁷ The judge denied Loomis' motion for a new trial, stating that the purpose of the civil rights act was to "recognize the equality of all men before the law."¹¹⁸ The judge reasoned that even though "saloon" was not enumerated in the act, it was included in the general term "other place of public refreshment."¹¹⁹ Loomis appealed to the Minnesota Supreme Court on the grounds that the judge's interpretation of the act was erroneous. Loomis argued that the legislature did not intend to include saloons within the protection of the act and that the act did not create a right to demand alcohol.¹²⁰

The court, in one of the last opinions written by Justice Mitchell,¹²¹ held for Loomis.¹²² The main issue before the court was

Duluth, he had never been refused service in that manner. *Id.* Rhone's testimony was corroborated on all substantial points by the testimony of Shannon. *Id.* at 7-9.

According to Loomis, he had never refused anyone because of his color and had only refused Rhone because he came into the saloon staggering drunk. Loomis stated that as Rhone went to leave he turned and said, "I will get even with you, you white headed bastard." *Id.* at 19.

117. *Id.* at 35-36.

118. *Id.* at 38. See Act of Apr. 23, 1897, ch. 349, § 3, 1897 Minn. Gen. Laws 616.

[A person who denies, or aids or incites another to deny to any other person because of race, creed or color, or previous condition of servitude, the full and equal enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, eating house, soda water fountain, ice cream parlor, public conveyance on land or water, theater, barber shop or other place of public refreshment, amusement, instruction, accommodation or entertainment, is guilty of a misdemeanor, punishable by a fine of not less than twenty-five (25) dollars, nor more than one hundred (100) dollars, or imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days. And in addition to the punishment prescribed herein he is liable in damages, in a sum not less than twenty-five (25) nor more than five hundred (500) dollars to the party aggrieved, to be recovered in a civil action.

Id. (emphasis added).

119. Paper Book, *supra* note 112, at 39.

120. *Id.* Rhone's attorney submitted a 16 page brief in which he argued that the term "saloon" was generic to other things listed in the act, that any other reading of the act would be incongruous with its intent, and that the fourteenth amendment required the state to protect the civil rights of all inhabitants. He argued:

There is no restriction put upon any person by this act as to what he shall or shall not do, save that he shall not discriminate against his neighbor because of his race, or his color or his creed. This is no hardship, it is but common justice and humanity crying out through the law for "equality before the law." It is the right of citizenship, and is fundamental and always existed in the nature of things, but has been held in abeyance by ignorance and autocrats. It has no place in America or American institutions.

Respondent's Brief at 12-13, *Rhone v. Loomis*, 74 Minn. 200, 77 N.W. 31 (1898) (No. 11048).

121. In 1898, Justice Mitchell was renominated by the Democrats and received substantial support in the Republican convention. This support was insufficient to get him the Republicans' nomination, which he needed to be re-elected to the bench. Some believed that "Minnesota lost its greatest judge." 1 STEVENS, HISTORY OF THE

whether saloons were generic with some of the other places listed in the act.¹²³ While admitting that “other places of public refreshment” could easily be interpreted to include places where intoxicating liquor was sold, Justice Mitchell concluded that because saloons were more numerous and more heavily regulated than the combined total of all other places mentioned in the act, the omission must have been intentional.¹²⁴ “[The act] nowhere mentions saloons or places where intoxicating liquors are sold.”¹²⁵

In his dissent, Chief Justice Start agreed that the liquor traffic should be restricted but saw no reason why the basis of the “restriction should be creed or color, or why saloons should be licensed . . . for the exclusive benefit of the white race.”¹²⁶ Start reasoned that conflicts were just as likely to erupt in a saloon from discrimination as from the enforcement of equal privilege. He pointed out that the misdemeanor is not in the refusal to serve liquor, but in the discrimination on the basis of race or creed. He also reasoned that since restaurants served liquor and were enumerated in the act, a saloon would be generic to places mentioned in the act. Justice Collins also dissented, writing, “I am decidedly of the opinion that the saloon is one of the ‘other places of public resort, refreshment, accommodation or entertainment’ mentioned in the law. If it is not, what place is?”¹²⁷

BENCH AND BAR OF MINNESOTA 66 (1904). Justice Mitchell died a year and a half later in retirement. *Id.* at 71.

122. *Rhone*, 74 Minn. at 205, 77 N.W. at 33. “[W]e are of opinion that, under the established canons of construction, it must be held that the legislature has excluded . . . [saloons], and that the general words do not, and were not intended to, include them.” *Id.*

123. Justice Mitchell began his analysis with the proviso that, in order to place a criminal penalty on a man for refusing to sell liquor, there had to be a “reasonable certainty” that the act demanded it. *Id.* at 203, 77 N.W. at 32. He also premised that, because all legislation on liquor traffic was restrictive, it is unlikely that the legislature wanted to increase the availability of liquor to anyone. *Id.*

124. *Id.* “The power of the legislature to enact such laws . . . under its police power . . . is no longer open to discussion.” The court concluded that there could be “no doubt” that such acts could apply to places that sold intoxicating liquors. *Id.*

125. *Id.* at 204, 77 N.W. at 32. The court reasoned:

[T]he legislature might have thought that the right to be furnished intoxicating drink would be of doubtful benefit to any class of people, and for that reason excluded saloons from the operation of the act. It is a well-known fact that, owing to an unreasonable race prejudice which still exists to some extent, the promiscuous entertainment of persons of different races in places where intoxicating drinks are sold not infrequently results in personal conflicts, especially when the passions of men are inflamed by liquor.

Id. at 205, 77 N.W. at 32-33.

126. *Id.* at 206, 77 N.W. at 33.

127. *Id.* at 207, 77 N.W. at 33. Cases similar to *Rhone v. Loomis* occurred elsewhere. For example, in *Fruchey v. Eagleson*, a black University of Indiana football player had been refused a meal with this teammates at a hotel’s restaurant. 15 Ind.

The black community was shocked by the result and by the majority's reasoning. The Appeal criticized Justice Mitchell as an "unjust judge," noting "[i]t was a good thing Justice Mitchell did not get re-elected." In the wake of the decision, "a number of saloons . . . refus[ed] to serve Afro-Americans that did so before."¹²⁸ In 1899 the act was amended to include saloons.¹²⁹

CONCLUSION

By the beginning of the twentieth century, the civil rights movement in Minnesota had surrendered its unique character and resources to the needs of the growing national struggle. In 1905, Frederick McGhee joined the likes of W. E. B. DuBois and William Monroe Trotter to form the Niagara Movement.¹³⁰ The movement became the vanguard of black protest in the United States that established the National Association for the Advancement of Colored People in 1910.¹³¹

The amount of discrimination faced by blacks in the state seemed insignificant when compared to the enormous obstacles faced by Southern blacks, such as the lack of the right to vote.¹³² What Min-

App. 88, 91, 43 N.E. 146, 147 (1896). The management offered separate accommodations it considered equal but would not seat Fruchey with other white patrons. The Indiana Court of Appeals held that the offer of separate accommodations did not satisfy the statutory requirements of equal advantages, privileges, and facilities. *Id.* at 101-02, 43 N.E. at 147.

128. The Appeal, Nov. 19, 1898, at 3, col. 4.

129. An Act to Protect All Persons in their Civil and Legal Rights, ch. 41, § 1, 1899 Minn. Gen. Laws 38-39.

130. See The Appeal, July 29, 1905, at 2, col. 3. In 1889 the Protective and Industrial League had become the Afro-American League of St. Paul. See Taylor, *supra* note 70, at 292-93. The local League joined with the national Afro-American League. John Adams and attorney Frederick McGhee took seats on the national executive committee. *Id.* at 293. There they concentrated on challenging discriminatory practices in the South but met with little success in the state or federal courts. Black Minnesotans became disillusioned by these failures and largely abandoned the national League by 1893. The St. Paul chapter existed until 1898. *Id.* at 293-94.

The council was beset by internal strife due to the conservative philosophy of its leader, Booker T. Washington, and was ineffective in combating the suffrage laws in the South. *Id.* at 294-95. In 1902, men like John Q. Adams and Frederick McGhee retained enough influence to have the council's national convention in St. Paul. There the national protest movement was polarized. *Id.* at 295. A growing number of influential blacks were alienated by Washington's conciliatory attitude toward segregation. This division led to the creation of the Niagara Movement. *Id.* at 296.

131. *Id.*

132. See Hicks, *The Persistence of Populism*, 12 MINN. HIST. 3, 9 (1931). By 1890 Mississippi had adopted a constitution requiring two years' residence in the state, a one year residence in the district or town, and a poll tax in order to vote. This resulted in a sharp decrease in the number of black voters in the state. Two years later, Mississippi's constitution was further modified to include a discriminatory literacy test that could bar even literate blacks from voting. South Carolina excluded black

nesota's blacks had gained, they gained by their own efforts in spite of their limited numbers and resources. At the turn of the century they were prepared to direct their efforts toward the national movement.¹³³

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votes by legal means in 1895. North Carolina introduced residence, education, and poll tax qualifications in 1900. Other Southern states similarly restricted black suffrage. *Id.*

133. See Taylor, *supra* note 70, at 294-95. In 1910, Minnesota's black population stood at 7,084. See THEY CHOSE MINNESOTA, *supra* note 26, at 74.