

Catherine Denial



More Questions than Answers: The Strange Case of Margaret McCoy's 1840 Divorce



The Edgar S. and Ruth W. Burkhardt
Lecture Series

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Ruth W. Burkhardt



Edgar S. Burkhardt

Edgar S. and Ruth W. Burkhardt

Edgar Seaverns Burkhardt (1896-1979) was born in Newton, Massachusetts, to Henry Otto and Ida Seaverns Burkhardt. He attended the Stone School and graduated from Newton High School. As a high school student, he had a distinguished athletic career earning letters in football, baseball, and hockey. In this last sport, he gained acclaim as one of the outstanding players of the Boston area. Edgar was a member of the National Guard during World War I. For more than 40 years, he was sales manager of the Massachusetts Broken Stone Company, in Weston. He was president of the Bituminous-Concrete Association of Massachusetts, a member of the Massachusetts Crushed Stone Association, and past president and member of the Exchange Club of Newton.

Ruth Wellington Burkhardt (1898-1985) was also born in Newton, the youngest of six children of A. J. and Helen Hill Wellington. She graduated from Newton High School and attended Simmons College, in Boston. She was active in community service as a member of the Family Service Bureau and the Florence Crittendon League and as a volunteer with the Newton-Wellesley Hospital Auxiliary and the Perkins School for the Blind. Ruth's sister Barbara, later one of the founders of the National Thespian Society, was for a year instructor of dramatics and the director of theatre at Knox. Another sister, Dorothy, was "first lady" of Knox College for 11 years (1926-36), as the wife of Knox President Albert Britt.

Edgar and Ruth Burkhardt raised three sons, Richard W. of Muncie, Indiana; Robert S. of Chatham, Massachusetts, and Edgar S. Jr. of Catasauga, Pennsylvania. They were blessed with nine grandchildren and nine great-grandchildren.



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Catherine Denial earned her B.A. (Honors) in American Studies from the University of Nottingham, England, her M.A. in History from the University of Wisconsin-Milwaukee, and her Ph.D. from the University of Iowa in 2005. Denial has worked at Knox for the past eight years, teaching a range of classes in her research specialities, including The History of Marriage in the U.S., the History of Birth Control and Reproduction in the U.S., Key Issues in American Indian History since 1870, and Time and Place in American Indian Cultures. Denial's book *Making Marriage: Husbands, Wives, and the American State in Dakota and Ojibwe Country* will be published by the State Historical Society of Minnesota Press in August 2013.

More Questions than Answers: The Strange Case of Margaret McCoy's 1840 Divorce

On January 11, 1840, the Wisconsin Territorial legislature passed *An Act for the Relief of Joseph R. Brown*, divorcing Brown from his second wife, Margaret, “because of the hostile incursions of Sioux Indians” against them. The legislature stipulated that the parties could divorce if they jointly wrote a separation agreement to be submitted to the Crawford County Justice of the Peace, dissolving their marriage as if it had never existed, and freeing Joseph and Margaret to marry again. Joseph was directed to provide Margaret with her “widow’s thirds” (one third of his property, both real and personal) as if he had died, and the legislature stipulated that the pair’s children would remain legitimate even after the divorce.¹ Joseph and Margaret signed their deed of separation—he with his name, she with her mark—on February 5, 1840. On August 11, the deed was certified by the Chief Justice of the Supreme Court of the territory, and at 5:00 pm on April 29, 1841, the deed was “received, certified, and recorded” by the Crawford County Registrar of Deeds.

In the deed, Joseph committed himself to provide for the economic support and education of his children and gave Margaret “two Calves, one Bay Mare, two breeding sows, a dozen Dung-hill fowl...improvements made...on a claim on the Red Rock Prairie, and three hundred and seventy-five dollars in specie” as her dower.² Behind these words was an exceedingly complex story. According to the original petition for divorce submitted to the Wisconsin Territorial legislature, Joseph had “been from a boy a resident within the Sioux Territory, and for many years past, a trader among said tribe.” Margaret was “a half blood Chippeway...[who had] lived among the tribe until within a few years when the Peace that then existed between the tribes induced her father to locate himself near Fort Snelling.” The two married in 1836, but—according to the petition—were prevented from establishing a household together by “war, with all its sorrow, [that] had broken out between the Sioux of Lac Travers and the Chippeways of Red Lake.” “Hostilities” rendered it out of the question that one of Chippeway blood could venture unto [Dakota] country,” yet Joseph was under contract to the American Fur Company: “arrangements...compelled him to proceed to Lac Travers, where he was detained until July 1838, during all which time the war continued between the two nations.” More bands of the Dakota and Ojibwe joined the fight in 1839, leading the Browns to conclude that “the war now raging the whole extent of the two nations, precludes the possibility of your Petitioners being able to reside together, unless they should leave the vicinity of both tribes.” Margaret, they argued, would be uncomfortable in a white settlement, “where the manners and customs were not familiar to her,” especially since she was “unable to speak the English language,” while Joseph argued he was “incapable of any business other than the one he now follows,” and that giving up the trade would make him “guilty of a breach of faith.” There was no way forward, argued the Browns, save divorce. While “under present circumstances it is impossible we should be together,” they wrote, they hoped the legislature would permit them to avoid becoming “a burden to each other, should either of us be inclined to form other matrimonial connection.”³

Today, such claims to unhappiness would be easily remedied by a no-fault divorce, but in 1840, no such mechanism to end a marriage existed. Divorce was hard to come by, not least of which because Americans believed good government and an orderly household, created by marriage, went hand-in-hand.⁴ The territorial, state, and federal governments of the United States were built upon a particular vision of civic responsibility—that men, as heads of households, entered civic life on behalf of their dependents: wives, children, servants, and slaves. The political system of the United States was predicated upon this vision, overwhelmingly reserving suffrage, jury service, elected office, membership before the bar, and judicial appointments to white, male heads of household and limiting the legal rights of all other persons by their degree of separation from that ideal. To sever the bonds of matrimony, therefore, undermined male control of women and children, and caused social disorder. So what made Joseph and Margaret’s divorce acceptable? What convinced legislators to bend the rules so flagrantly for this pair?

We may never know, as the story of Joseph and Margaret’s divorce offers more questions than answers. Almost nothing from the deliberations of the territory’s legislators on the matter of the Browns’ divorce survives. The records of the judiciary committees of both houses have been lost. There is no tally of votes from the Council—the territory’s upper house—showing the margin of legislators in favor of the divorce, much less their names. There are few consistencies in the biographies of the 14 members of the lower house who voted in favor of the marriage’s dissolution and whatever personal relationships may have shaped the legislators’ response to the petition are likewise lost.⁵ In addition, while it is relatively easy to document Joseph Brown’s life in the region, what little we know about Margaret McCoy is gleaned from shards of information scattered through the papers of other Midwesterners, Margaret’s own illiteracy limiting

the information she could record. We may never be able to piece together her motivations for marrying Joseph Brown, or define her sense of self, the cultural identity she practiced and claimed, and the impact that had upon her choices throughout her life—important considerations that are almost impossible to pin down.

Given this, it is tempting to dismiss the Browns' divorce as fascinating trivia—yet to do so is to miss the greater import of this single event. For all the unanswered questions surrounding Joseph and Margaret's divorce, the dissolution of their marriage provides us with an unparalleled window into the messy business of state-making on the United States' western fringe. From the Browns' divorce we learn that being a legislator in Wisconsin Territory was an often unglamorous, farcical enterprise; that legislating marital dissolution was one way in which legislators sought to impose Euro-American social control on a region that defied the same; that despite material hardships, the signing of treaties, and the slow pressure of increased Euro-American settlement in the region, this was an Ojibwe and Dakota place whose inhabitants were engaged in resistance to the plans of traders, government officials, and missionaries alike. Exactly why Joseph and Margaret were permitted to divorce may remain a mystery, but the stories that surround their divorce reveal much about a region in flux.



There was much about the story Joseph and Margaret told about their married life that was true. Joseph's presentation of himself as a Dakota trader in a time of immense regional upheaval was truthful; so was his brief description of Margaret's ancestry and migration in the region.⁶⁷ It was also true that the general shape of Joseph and Margaret's marriage followed the patterns of coexistence intrinsic to the fur trade: it had long been the case that non-Native men married Native women to gain a foothold in the enterprise. Given that general context, the divorce petition provides, at first glance, a familiar story with a tragic twist: a non-Native man entered the fur trade and took a Native wife to facilitate his business relationships, yet despite years of such arrangements working well for Native communities and non-Native traders alike, war made this an untenable match.

Yet that tale does not stand up to scrutiny, and required legislators to be persuaded by the broad strokes of the story and not to examine the situation too closely—not to ask why a Dakota trader would marry an Ojibwe wife; not to ponder what advantage either could derive from such a relationship as it was traditionally defined. The real story of the Browns' marriage was much messier than the petitioners would have had legislators believe.

We know that Joseph and Margaret's relationship began before 1836—their first child, Margaret, was born on November 14, 1835. In 1836, Joseph's uncle died in Pennsylvania, leaving money in trust for Joseph's legitimate heirs, and this prompted the couple to marry—a turn of events that Joseph admitted he had never anticipated. “When I arrived at St Peters, if anyone had told me I would marry that girl I should have thought them out of their minds,” he wrote to his friend Henry Sibley in October 1836.⁸ Margaret had, he told Sibley, agreed, “[to] give me opportunity of getting a divorce before I will be able to marry, & then if necessary it is only the expense of a lawsuit and things will be straight.” Yet neither Joseph or Margaret considered divorce to be a necessary prerequisite for beginning a new relationship. Brown courted Susan Frénière, a Dakota woman from Lac qui Parle, who bore Joseph a child at Lake Traverse in 1836; though the two would live together for the rest of their lives, they did not enter into a formal, Euro-American marriage until 1850.⁹ Nevertheless, we know, by the crudest of measures, that Joseph and Margaret continued their sexual relationship after their union was solemnized by missionary Thomas Williamson at Fort Snelling in 1836: Margaret bore Joseph a second child, Mary Ann, in 1838.¹⁰ Margaret also entered into other relationships during the duration of her marriage to Brown—she was four months pregnant with Peter Bouché's daughter when she and Joseph signed their deed of separation in 1841.¹¹ By the end of that year she was married to Joseph Bourcier, a man who had worked for several years for Joseph Brown, and it was Bourcier with whom she would spend the rest of her life.¹²

Things were also messy at the state capitol. It is easy to presume order when looking at the Browns' divorce statute, to read back into the Madison of 1838 and '39 a settled aspect that did not exist. Madison was founded on land owned by Judge James Doty in 1837: George Stoner, who arrived that year as a child, described the settlement as “a forest of giant oaks, among which were nested two or three log cabins, where the weary traveler was sheltered, fed and kindly cared for.”¹³ Construction on the territorial capital began that year, but by 1838, little had been completed, and the first Madison-based legislators for the territory met in an unfinished, roughed-out building that fall. Ebenezer Childs recalled that the “floors were laid with green oak boards, full of ice; the walls of the room were iced over; green oak seats, and desks made of rough boards; [while] one fire-place and one small stove [heated the space.]” Finished space was at such

a premium in the settlement that James Morrison housed his pigs in the basement of the Capitol. Childs recalled that in the session in which the legislators considered the Browns' divorce he would, when speakers became "too tedious...take a long pole, go at the hogs, and stir them up; when they would raise a young pandemonium for noise and confusion. The speaker's voice would become completely drowned, and he would be compelled to stop, not however, without giving his squealing disturbers a sample of his swearing ability."¹⁴ Things were scarcely more refined when the legislators dismissed at the close of business each night. J. G. Knapp recalled that in 1838 a man seeking lodging in the town was lucky to find "two feet by six of floor...at two pence a square foot, where the weary passenger might spread his own blanket, and use his saddle...for a pillow, and rejoice that he had so good a bed." By the time the legislature was in session, sleeping space was at even more of a premium, a situation relieved only by the fact that, in Knapp's words, men were "remarkably accommodating in those early times, and without a grumble...could occupy a field bed, where they were forced to lie spoon fashion [with one another]."¹⁵

These, then, were the messy personal circumstances amid which Wisconsin's territorial legislators sought to organize their thoughts about divorce. Such work was not unusual for legislators of the era—mechanisms for divorce had existed within the Anglo-American legal system from the earliest years of colonial settlement, and by 1840 existed in every state and territory but South Carolina.¹⁶ In 1839, the legislators of Wisconsin territory—which had inherited its existing divorce laws from the territory of Michigan—passed *An Act Concerning Divorce*, transferring jurisdiction for divorce proceedings from the legislature to the judiciary. With the passage of that act, complete dissolution of a marriage was permitted in proven cases of adultery or impotence, while the grounds for legal separation were expanded to include extreme cruelty, desertion, abandonment, or drunkenness.¹⁷ Legal separations did not undo the marriage contract, but modified it, removing individuals from the economic responsibilities required of them by marital law. In cases of legal separation, therefore, a woman who had been wronged was generally owed her husband's financial support but was excused from sharing or maintaining his home; men who won their case were generally excused from making financial provision for their wives.¹⁸

Such laws reflected a national trend—not toward impossibly fragile marriages, but toward legislators exerting control over the way in which marriages ended. Americans had long sought exits from their marriages for many and varied reasons—because partners could not stand one another; because of abandonment, poverty, or a husband's disinterest in providing for his wife; because work was more easily found in another place; because of illness, incest, or abuse. But the law did not recognize such impediments as cause to dissolve a marriage contract, and in response, couples wrote their own deeds of separation, or simply parted. These remedies were extra-legal and pervasive, and in a country that so closely aligned the practical, philosophical, and legal responsibilities of marriage with the orderly political functioning of government, they threatened the ability of legislatures and judicial bodies to enforce a social order that best served the state. Expanding the reach of legal divorce put legislators and judges in charge of the process; it carefully and deliberately set the state in opposition to extra-legal separation.¹⁹

Yet not all Wisconsin couples found themselves in marital difficulties easily redressed by the 1839 law. Legislators were still forced to consider more unusual pleas for divorce after that date, and it is in those petitions that we find particular evidence of marital and social instability. In their responses to such petitions the legislators proved consistent: when faced with the stories of separated and unhappy couples whose troubles merely suggested that marriage could be miserable, they held firm—unhappiness, cruelty, and even abandonment were not sufficient cause for them to grant a couple a complete divorce. Samuel Hubbard of Platteville left his wife, Achesah, and moved to Wisconsin in 1836 because he had been "treated...in a cruel and unbecoming manner, both by [her] words and actions." Achesah, Hubbard charged, had threatened his life, wounded him "with unlawful and deadly weapons...[and] often told him that their youngest child belonged to another man."²⁰ Sarah Leach of Green Bay was married on June 4, 1837, only to have her husband abandon her within two weeks.²¹ Harriet Tyrer claimed that she had married at the age of 13 under false pretenses, having been led "to believe by the representatives of...William Tyrer that he was a man of considerable property and of industrious habits." Not only did William turn out to be "destitute," "indolent," and "harsh," but Harriet claimed he was "of a suspicious and exceedingly jealous disposition."²² All of these petitions, and others like them, were denied—legislators rejected the idea that the rules of coverture—the roles of husband and wife under marital law—and therefore social order, should be suspended in any of these cases.²³

Aside from the Browns, the only other successful petitioners for a legislative divorce between 1839 (when divorce was made a judicial responsibility) and 1841 (when the Browns' divorce was finalized) were Peter Howard, of Mineral Point, and Josiah Moore, of Vernon. Peter's case was uncomplicated—his wife had engaged in "repeated and long

continued acts of inconstancy and adultery,” established grounds for divorce in the courts. His need for a legislative divorce rested on the fact that his wife lived in Tennessee, and therefore was not available to participate in the proceedings—the matter was swiftly handled.²⁴ Josiah Moore’s case, however, was more complex: he had married Levisa Nichols in Oxford, Massachusetts, in 1827, but by 1831, she was insane. With the blessing of her family, Josiah emigrated to Wisconsin alone and began “improvement[s]” on 220 acres of land. Returning to Oxford in 1840 and finding his wife’s condition unchanged, Josiah entered into a separation agreement with his wife’s father, David Nichols, in which he relinquished his marital rights and was released from the obligation of his wife’s support. The agreement likewise freed Josiah from providing financial support for his daughter, Derushua, and stipulated that he would not interfere “with any legacy, devise, or distribution share,” of Nichols’ estate. Finding himself, by December 1840, “to require the assistance of a wife of sane mind,” Josiah petitioned the legislature for a legal divorce. The legislature consented but crucially required Moore to continue to support Levisa as if she were still his wife.²⁵

The conditions the legislature placed upon Josiah’s divorce gave a nod to coverture and the social responsibility of men to provide for the economic security of women. Josiah was required to continue to support Levisa, even though their marriage had ended. This may have had practical elements. Levisa’s parents surely could not live forever, and while she was insane she was unlikely to marry again; she stood at risk of becoming a financial burden on her community if not provided for by others. But as a resident of Massachusetts, Levisa did not threaten to become a drain on the resources of Wisconsin territory—the importance of emphasizing the husband as head of household, as provider, was more abstract than immediate. The actions of the legislature, by accident or design, affirmed the patriarchal structures of orderly society. The divorce occurred as a transaction between men—between legislators protecting a woman rendered economically disabled by illness, a husband who sought marital freedom but who was ordered to provide, and a father who welcomed his daughter back into his home in accordance with social practices that made a father’s house one of the few legal places of refuge for unhappy or abused wives. The dissolution of the Moores’ marriage did not threaten to upset the tenets of social order embedded in the law of domestic relations.²⁶

In contrast, the terms of the Browns’ divorce turned coverture and divorce law on their head. The Browns were divorced because of “the hostile incursions of the Sioux Indians”: it was a divorce prompted, and granted, in recognition of circumstances that would more ably have been resolved by the parties’ relocation than by the legislature agreeing that their marriage should come to an end.²⁷ In addition, as a married woman, Margaret had no legal identity separate from that of her husband; she could not contract or sue in her own name, and had Joseph been charged on a criminal count, she would have been unable to testify against him. Yet the territorial legislature ordered that Joseph and Margaret draw up a separation agreement together, in effect recognizing a competent, and separate, legal identity in Margaret’s person.²⁸ To complicate matters further, the legislature recognized that the parties were “mutually desirous of dissolving the marriage contract,” a clear admission of the collusion of the couple. Such collusion ran against the principle by which divorce was a tool to punish the guilty and protect the innocent—there were no such identified parties in the Browns’ divorce. Why, then, was the Browns’ divorce successful, when so many other unhappy married couples enjoyed no such redress?

What the divorce did not indicate was a general belief that violence nullified the marriage contract: evidence suggests that violence was never considered cause for divorce by territorial legislators, even when that violence was committed against a husband or wife by their partner. Samuel Hubbard’s suggestion that he had rightly left an abusive wife, and should be allowed to divorce her, fell on deaf ears. Nancy Shipley’s 1841 petition for divorce was similarly denied. Shipley charged that her husband, John, “turned her and a small child out of his house when the weather was cold and severe and compelled her to remain out during the whole night.” John further beat Nancy “with a hickory and threatened to kill her” while she was pregnant, “and often when she was in ill health compelled her to assist him in outdoor work.” The violence Nancy Shipley faced was inextricably bound to the circumstances of her marriage—a full divorce would have granted her a release from the conditions that facilitated her abuse. Joseph and Margaret could claim no such direct relationship between divorce and the cessation of violence toward either of them, yet their petition was granted, whereas Nancy Shipley’s was not.²⁹

Where the Browns’ situation materially differed from those of the other divorce petitioners of the era was in the intersection of their married life with the turbulent consequences of American expansion in the Upper Midwest. The Browns had been truthful in their description of a region riven by war—a fact of which Wisconsin’s legislators could not have been ignorant. Subsistence patterns throughout the region had been threatened by a series of harsh winters and further disrupted when the wild rice crop failed in 1837; game was similarly scarce. This scarcity not only resulted

in hunger but weakened an already fragile fur trade. The subsistence and trade cycles of the region's Native groups were headed toward crisis, and relentless competition between the Dakota and Ojibwe for those natural resources that remained was a result.³⁰ Warfare ensued as communities tried to defend and police the places where they hunted and gathered against those they perceived to be intruders into that space.

It was in this context that the Dakota and Ojibwe communities with land east of the Mississippi river entered into treaty relationships with the United States. There were multiple parties who wanted the treaties to come to pass—Lawrence Taliaferro, the Indian Agent, believed a treaty would help shift the Dakota toward Euro-American-style agriculture; traders wished their debts to be cleared; speculators wanted access to the natural resources of Ojibwe and Dakota lands—but local Native communities also saw the benefit of exchanging limited amounts of land for money and goods that could alleviate the subsistence problems they faced.³¹ In a treaty negotiated in 1837, the United States agreed to provide the Ojibwe with \$9,500 in specie, \$19,000 in goods, \$2,000 in provisions, and several thousand dollars of financial support in the form of blacksmiths and farmers, supplied with the tools of their trade. The Ojibwe were further promised the “privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded...during the pleasure of the President of the United States,” a stipulation that protected them from being immediately removed.³² The Dakota treaty of that same year, negotiated in Washington, D.C., stipulated that the U.S. government would invest \$300,000 on the Dakota's behalf in order to provide an income of at least five percent to the community. Annuities of \$10,000 in goods, \$5,500 in provisions, and \$8,250 in agricultural supplies and support were to be paid to the Dakota for 20 years, while \$90,000 was stipulated for the coverage of debts. Six thousand dollars in goods was owed to the Dakota after they had signed the treaty, to be delivered to them in St. Louis as they made the journey home.³³

The ramifications of the treaties for the Dakota and Ojibwe were swift and uncompromising. Speculators interested in the ceded land's natural resources—most specifically lumber and water power—flooded the region before the treaties were ratified. Missionary William Boutwell observed in a letter to his superiors in Boston, that “[t]he day after the Inds gave up their country some dozens of speculators rushed into the country & as I came through to this place I found one here who had taken possession of a mill seat & another there who had selected a pinery. Here they are in the neighborhood of Pokegoma, making preparations for speculation before the treaty is ratified.”³⁴ The speed of this settlement, coupled with a delay in the disbursement of annuities from the treaties, caused both the Dakota and Ojibwe to question the nature of the agreements they'd signed. Edmund Ely, missionary to the Ojibwe at Fond du Lac, noted as early as January 1838 that “[w]hen we receive letters we are questioned concerning their topics, & whether any thing is said of the intentions of the Govt towards the Indians. Some affect to be displeased that any portion of their lands are sold, & wish the treaty annulled.”³⁵

Rather than alleviating competition for natural resources, the treaties increased tensions in the region and further violence ensued. In April 1838, three Dakota families—17 people in all—were killed by a small band of Ojibwe warriors from Leech Lake. At least three retaliatory attacks were organized by the Dakota that year, and one by the Ojibwe. Native suspicion of and acts of aggression toward traders, government officials, and missionaries also increased. In a letter in June 1838, Jedediah Stevens reported that the Dakota at Lake Harriet “have never before since we came here been as straitened for the means of subsistence as now.” The result was, he claimed, “considerable dissatisfaction [directed] toward the Govt, Agent, traders and the whites generally...A trader some time since was fired upon and narrowly escaped death. Another, Louis Provensalle (a half-breed Sioux) was shot through the body and instantly expired.” Thomas Williamson observed similar trends at Lac qui Parle, where the Dakota “became desperate killed nearly all the cattle and horses belonging to the post & one shot the trader [at Traverse des Sioux] with the intention of killing of which wound he has however recovered.” That trader was Joseph R. Brown.³⁶

The meta-circumstances described in the Browns' divorce petition to the Wisconsin legislature were a stark reminder of the myriad instabilities at the territory's western fringe. The Dakota and Ojibwe had their own sense of order and duty that did not answer to American law; by and large they refused to become Christians; overwhelmingly they resisted the forms of marriage and kinship Americans preferred. Even when they could be convinced to enter into a treaty relationship with the U.S. government and cede lands to American settlers, they considered the bureaucratic workings of American government that followed such negotiations to be unwieldy and unprincipled; all Americans were suspect as a result, and violence flared toward missionaries and traders alike. This was the very real and lively backdrop to Joseph and Margaret's petition—a country as yet sparsely settled by Americans, absorbed by violent episodes Americans could not control, in which alternate meanings of place, family, law, and spirit thrived.

At the micro and macro level, the Upper Midwest was not an American space, a reality captured by French cartographer Joseph N. Nicollet in a map published for the U.S. government in 1843. In 1838 and 1839, Nicollet traveled extensively through the Upper Midwest at the U.S. government's expense, determining the longitude and latitude of significant geographic markers with the use of a chronometer and barometer, and by reference to the stars. His expedition was, as Joel R. Poinsett, Secretary of War, articulated in his report to Congress in 1838, one means by which the government hoped to more ably plan for future expansion. "We are still lamentably ignorant of the geography and resources of our country," he wrote. "It is essential to its defense, as well as to its improvement, that the boundaries, the course of rivers, the size and form and obstacles to navigation of the lakes, and the direction and height of the mountains, should be accurately determined and delineated."³⁷

The completed map reflected much of the government's faith in its own ascendancy across the continent. Nicollet drew political boundaries upon the landscape, noting the borders of Wisconsin and Iowa territories, the presence of the United States' military at Forts Snelling and Crawford, and new American communities in towns like Madison. Dominant features of the landscape were accurately recorded for Westerners for the first time and, most significantly, labeled with European names.

Yet for all that the map suggested about the political, military, and social inroads Americans had made into the Upper Midwest, it testified to the persistence of other cultures and other senses of place. The map showed the well-established trading posts of Traverse des Sioux and "Fort Renville," where Native, non-Native, and French-heritage people had formed economic and cultural alliances over the past 150 years. For each new settlement the map identified, it showed the location of older mixed-heritage communities such as Dubuque and Prairie du Chien—the very use of French spoke to a history that preceded that of the United States. Most tellingly, Nicollet was careful to note that vast swathes of land were still "M'dewakanton," "Wahpeton," "Warpekuyey," "Sissiton," and "Chipeway country."³⁸



Joseph Brown and Margaret McCoy—as individuals, as a married couple, and as parties to a divorce—lived in this between-space, amid a landscape that held a thousand Native stories, that bore the ox-cart trails of refugees, that ran wild with the course of rivers, upon which new settlers wished stone houses built. The county in which the Browns claimed residence sat across the Mississippi river from what would, in nine years, be the territory of Minnesota. That county owed organizational and governmental allegiance to Wisconsin and to the territorial capital of Madison, but in cultural and practical terms, it shared more with the country west of the Mississippi than with the settled areas of Wisconsin around Milwaukee and Green Bay. It was Fort Snelling that was the closest U.S. institution to Joseph and Margaret, and their indigenous family and trade connections were all to the north and west. Their personal histories connected them to decades of inter-cultural interaction in the region, to the many couples of mixed cultural backgrounds who had, before them, enjoyed companionship, a sexual relationship, the birth of a child, and a livelihood connected to the fur trade without deep reverence for the application of Euro-American law. Their divorce oriented them toward a new social order, appealed to the organizing principles of American legislative decrees, but they succeeded in large part because law could not yet order the Upper Midwest as a place.³⁹

Laws had limited influence. Upheld, they could have compelled Joseph Brown to remain married to his wife, but in doing so, legislators ran the risk of maintaining a connection between two people that could, amid the uncertain circumstances of Native unrest in the region, get Joseph or Margaret killed. Laws should have prevented Margaret from drawing up a contract to secure her divorce, but the result could have been a settlement in Joseph's favor, leaving Margaret destitute and thus a burden on the fledgling state. Laws could be used to declare the Upper Midwest "Wisconsin territory," but they had no power to force the Dakota or Ojibwe people on its western fringes to recognize such a place.⁴⁰ Laws could indeed help create a new world, extending to settlers the right to operate ferries, establish businesses, and found new towns, but they could not legislate away patterns of living that had existed in the region for centuries, nor govern the manner in which conflict between those worlds would take place.⁴¹ The legal system which was supposed to establish order in the Upper Midwest was, in 1840, patently unable to do so. In many senses, it posed more questions than it provided answers. In a perfect paradox, the pursuit of social order required that the law be temporarily ignored.

¹ Wisconsin, *An Act for the Relief of Joseph R. Brown*. 1840. The spelling of Margaret's first name varies between documents, including Margerit and Marguerite. I have used Margaret throughout for consistency's sake.

² Deed of Separation of Joseph Brown & Margaret Brown (1841), Deed Book D, Crawford County (Wis.), Register of Deeds: Record Books, 1811-1969, Microfilm, Reel 2.

³ Petition of J.R. Brown for Divorce, Wisconsin Legislature: Petitions, Remonstrances, and ^{Resolutions}, Box 1, 1838-1841, State Historical Society of Wisconsin (SHSW).

⁴ American, here, describes all those people living in North America, whether U.S. citizens or immigrants, who had allied themselves with U.S. cultural, economic, and political beliefs.

⁵ See *Journal of the Council. Third Session of the Second Legislative Assembly of Wisconsin*. (Madison: William W. Wyman, 1840), 3, 4, 97, 105, 109, 111, 131, 139, 145, 154; *Journal of the House of Representatives of the Second Legislative Assembly of Wisconsin; Third Session*. (Madison: Josiah A. Noonan, Printer, 1840), 3, 4, 171, 187-190, 227; "The Territorial Census for 1836," *Collections of the State Historical Society of Wisconsin*. Vol. XIII (1895): 247- 270; Ebenezer Childs, "Recollections of Wisconsin since 1820," *Wisconsin Historical Collections*, Vol. IV (1859): 153-195; Patrick J. Jung, "Judge James Doty and Wisconsin's First Court: The Additional Court of Michigan Territory, 1823-1836," *Wisconsin Magazine of History*. 86:2 (Winter 2002-2003): 32-41; Morgan L. Martin, "Narrative of Morgan L. Martin," *Collections of the State Historical Society of Wisconsin*. Vol. XI (1888): 385-415; Alexander Pratt, "Reminiscences of Wisconsin," *Collections of the State Historical Society of Wisconsin*. Vol. I (1903): 127-145; Frederick Marryat, "An English Officer's Description of Wisconsin in 1837," *Collections of the State Historical Society of Wisconsin*. Vol. XIV (1898): 137-154; Charles E. Dyer, "Rochester Early Settlers," historical address, 1871, reprint at <<http://www.racinehistory.com/wrw.htm#Rochester>> (accessed August 15, 2012); entries on Nelson, Dewey, Charles Clark Sholes, Horatio Nelson Wells, and Edward Vernon Whiton in *Dictionary of Wisconsin History*, <<http://www.wisconsinhistory.org/dictionary/>> (accessed August 15, 2012).

⁶ Goodman and Goodman, 290, 111.

⁷ *Ibid*, 290; Rhoda R. Gilman, *Henry Hastings Sibley: Divided Heart*. (St. Paul: Minnesota Historical Society Press, 2004), 59; Mary Lethert Wingerd, *North Country: The Making of Minnesota*. (Minneapolis: University of Minnesota Press, 2010), 147.

⁸ Second letter of Joseph R. Brown to Henry H. Sibley, October 4, 1836, Henry Hastings Sibley Papers. Microfilm copy of original, Minnesota Historical Society (MNHS).

⁹ Goodman, 289.

¹⁰ *Ibid.*, 129-131, 135-136, 290-292.

¹¹ Bouché was a witness to that deed. Baptismal records suggest that Bouché was Adeline's father, but definitive proof comes from his listing as her parent on her death certificate from 1921. Magdeline McKye baptism record, No. 65, Parish of St Peter, Selected records from Cathedral of St. Paul Parish Record Books, 1840-1857, MHS; Adelina Sharrow certificate of death, No 22230 (1921). State of Minnesota, Division of Vital Statistics, St. Paul, Minnesota. (Adeline's name is variously spelled Magdeline, Adeline, Adelina, MaKye, and McCoy (before her marriage).)

¹² Marriage record, No 5. December 28, 1841, Parish of St Peters, Selected records from Cathedral of St. Paul Parish Record Books, 1840-1857, MHS.

¹³ "Stoner's Memories: Story of Early Madison Told by One who Arrived in 1837," *Madison Journal*. June 6-7, 1896. See also, Franklin Hatheway, "Surveying in Wisconsin in 1837," *Wisconsin Historical Collections*. XV (1900): 390-399. 9

¹⁴ Childs, 191.

¹⁵ Knapp, 374-375.

¹⁶ For general discussion of divorce in America before 1840, see Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth Century America*. (Chapel Hill: University of North Carolina Press, 1985); Glenda Riley, *Divorce: An American Tradition*. (New York: Oxford University Press, 1991); Hendrik Hartog, *Husband and Wife in America: A History*. (Cambridge, MA: Harvard University Press, 2000).

¹⁷ Michigan, *An Act Concerning Divorces*. (1819); Michigan, *An Act Concerning Divorce*. (1832); Wisconsin, *An Act Concerning Divorce*. (1839). The 1819 Michigan statute allowed divorce *a mensa, et thoro* if a husband had abandoned or neglected his wife. By 1832, these grounds had been replaced by "extreme cruelty" and "wilful desertion of either party for five years." By 1839, Wisconsin had reduced the term of abandonment from five to two years, reinserted "abandonment of the wife by the husband, or his refusal or neglect to provide for her," and added "habitual

drunkenness” as a basis for petition.

¹⁸ Hartog, *Man and Wife in America*, 29-33.

¹⁹ Hartog; Nancy Cott, *Public Vows: A History of Marriage and the Nation*. (Cambridge: Harvard University Press, 200), 24-55.

²⁰ Samuel Hubbard, Affidavit and Petition, December 30, 1839. Wisconsin Legislature: Petitions, Remonstrances, and Resolutions, Box 2, 1839-1841, State Historical Society of Wisconsin (SHSW).

²¹ Petition of Sarah Leach for a Divorce from her Husband John Leach, January 14, 1842, Wisconsin Legislature: Petitions, Remonstrances, and ^{Resolutions}, Box 3, 1842-1843, SHSW.

²² Petition of Harriet Tyrer, December 7, 1840; Wisconsin Legislature: Petitions, Remonstrances, and Resolutions, Box 2, 1839-1841, SHSW.

²³ Petition of Rebecca P. Farrington, Wisconsin Legislature: Petitions, Remonstrances, and Resolutions, Box 3, 1842-1843. Also see Samuel Hubbard, Affidavit and Petition, December 30, 1839; Petition of Magdaline Gauthier for divorce, November 2, 1838 [misfiled]; Petition of Peter Howard, December 6, 1840; Wisconsin Legislature: Petitions, Remonstrances, and ^{Resolutions}, Box 2, 1839-1841; Petition of Sarah Leach, January 14, 1842; Petition of Adelheid Deisner, March 6, 1843; Petition of Elizabeth Harlow, March 14, 1843. Wisconsin Legislature: Petitions, Remonstrances, and ^{Resolutions}, Box 3, 1842-1843.

²⁴ Petition of Peter Howard, December 6, 1840, Wisconsin Legislature: Petitions, Remonstrances, and ^{Resolutions}, Box 2, 1839-1841, SHSW.

²⁵ Petition of Josiah Moore, December 26, 1840. Wisconsin Legislature: Petitions, Remonstrances, and Resolutions, Box 2, 1839-1841, SHSW; Wisconsin, *An Act for the Relief of Josiah Moore*. (1841).

²⁶ See Hartog, 97.

²⁷ Wisconsin, *An Act Concerning Divorce*. 1839; Wisconsin, *An Act for the Relief of Joseph R. Brown*. Preamble. 1840.

²⁸ William Blackstone, *Blackstone's Commentaries: with Notes of Reference to the Constitution and Laws of the United States and of the Commonwealth of Virginia*. Vol. 2. St George Tucker, ed. (1803; reprint, New York: Augustus M. Kelley, 1969), 441. See also Linda K. Kerber, *No Constitutional Right to be Ladies: Women and the Obligations of Citizenship*. (New York: Hill and Wang, 1998), 13-15; Hartog, 79-82, 106-107.

²⁹ Petition of Nancy Shipley for a Divorce, “Referred to the comm. on Judiciary, January 22, 1841,” Wisconsin Legislature: Petitions, Remonstrances, and Resolutions, Box 2, 1839-1841, SHSW.

³⁰ See Frederic Ayer to David Greene, October 4, 1837. (It is worth noting that the missionaries always thought of Native groups as poor, judging their living patterns, as they did, in comparison to eastern Euro-American standards of dress, housing, and subsistence.); Thomas Williamson to David Greene, May 3, 1838. American Board of Commissioners for Foreign Missions Papers (ABCFM), MHS. Also see Frederic Ayer to the Secretary of War, September 28, 1837; William Boutwell to David Greene, November 8, 1837; Steven Riggs to David Greene, June 22, 1838. ABCFM, MHS.

³¹ Wingerd, 128-135.

³² Treaty with the Chippewa, 1837, in Charles J. Kappler, ed. *Indian Affairs: Laws and Treaties*. Vol. II. *Treaties*. (Washington : Government Printing Office, 1904), 491-493.

³³ Treaty with the Sioux, 1837, in Kappler, 493-494. The treaty also promised \$110,000 to mixed-heritage individuals who could claim kinship with the Dakota bands.

³⁴ William Boutwell to David Greene, August 17, 1837; on the question of lumber speculation and land sales, also see Frederick Ayer to David Greene, October 4, 1837. ABCFM, MHS.

³⁵ Edmund Ely to David Greene, January 5, 1838. 1838; J. D. Stevens to David Greene, September 12, 1838; Thomas S. Williamson to David Greene, May 10, 1838. ABCFM, MHS.

³⁶ Jedediah Stevens to David Greene, June 28th, 1838; Thomas Williamson to David Greene, May 10th, 1838. ABCFM, MHS

³⁷ Report of the Secretary of War, *Congressional Globe*. 25 Congress, 3 session, Appendix, 4.

³⁸ Joseph Nicolle, *Map of the Hydrographical Basin of the Upper Mississippi River*. 1843. David Rumsey Map Collection,

San Francisco. Digital collection at <<http://www.davidrumsey.com>>.

³⁹ In this, Joseph and Margaret were like countless other fur trade couples before them. See Sylvia Van Kirk, *Many Tender Ties: Women in Fur-Trade Society, 1670-1870*. (Norman: University of Oklahoma Press, 1980); Jennifer S. H. Brown, *Strangers in Blood: Fur Trade Families in Indian Country*. (Norman: University of Oklahoma Press, 1980); Lucy Eldersveld Murphy, *A Gathering of Rivers: Indians, Métis and Mining in the Western Great Lakes, 1737-1832*. (Lincoln: University of Nebraska Press, 2000); Susan Sleeper Smith, *Indian Women and French Men: Rethinking Cultural Encounter in the Western Great Lakes*. (Amherst, Mass.: University of Massachusetts Press, 2001); Carl J. Ekberg, *Stealing Indian Women: Native Slavery in the Illinois Country*. (Urbana: University of Illinois Press, 2007).

⁴⁰ U. S. Congress, *An Act Establishing the Territorial Government of Wisconsin*, Statutes at Large. 5, 15, (1836).

⁴¹ See, for example, Wisconsin, *An Act to authorize Matthias Hamm and Horace Smead to establish a ferry across the Mississippi River*. (1838); *An Act to authorize Levi Moffett to keep a ferry across Skunk River, at Moffett's Mill*. (1838); *An Act to authorize William H. Bruce and others to build and maintain a dam on the Manitowoc River, and for other purposes*. (1840); *An Act to incorporate the 'Wisconsin [sic.] Lead Mining, Smelting and Manufacturing Company'*. (1840); *An Act to incorporate the Fox and Wisconsin Steam Boat Company*. (1840); *An Act to Provide for the Government of the Several Towns in this Territory, and for the Revision of County Government*. (1841).