

“Damned Yankee Court and Jury”: Colonization and Resistance in
Nineteenth-Century Wisconsin

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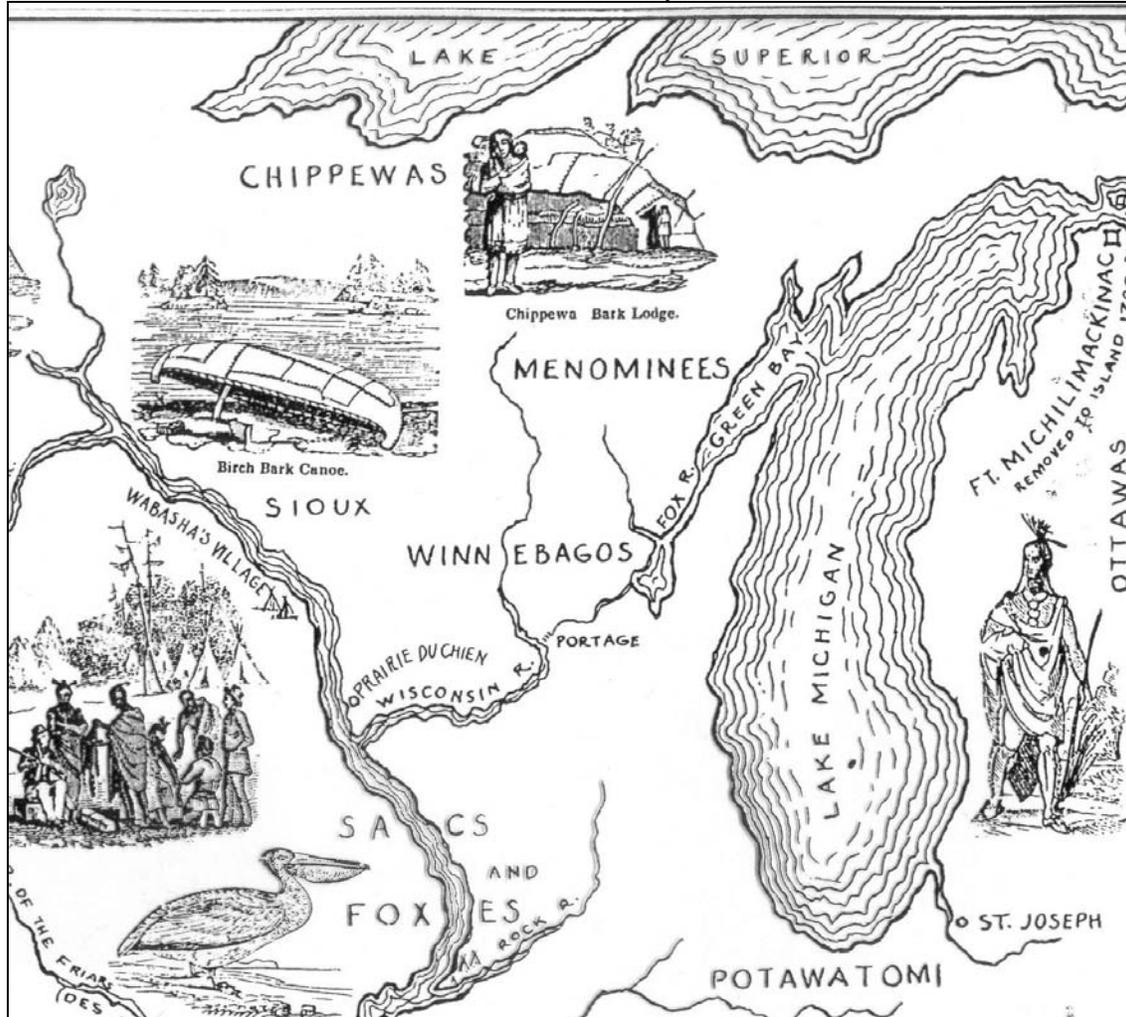


Figure 1: Detail from "Trade Territory of St. Louis in the Late XVIII Century After Perrin Du Lac et al. Vignettes from Mitchell's Geography, 1847," [1939] from Missouri Historical Society library.

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Sitting in a makeshift courtroom in Prairie du Chien, Judge James Duane Doty was disgusted that spring day in 1824 as the foreman John Kinzie read the verdict of the predominantly Creole jury in the case of the *U.S. v. Barrell*. These were fur traders and voyageurs, most of them men who had lived here through the last years of the British régime and the conquest of the Great Lakes region by the United States. They were multilingual in French, English, and sundry Native languages; through their wives, parents, siblings, and children they were connected to Dakota, Mesquakie, Odawa, and Ho-Chunk Indian communities.¹ Most of them had supported the British in the War of 1812, which had finalized the conquest of what is now Wisconsin by the United States. As part of Michigan Territory, this region was a colony of the United States.

The men who sat on the jury in 1824 had ancestors from both nearby and far-flung locales. They included not only men of French and French Canadian ancestry such as Louis Rouse, Edward Pizanne, and Denis Courtois; but also Anglo-Canadian John Simpson, and Henry M. Fisher, of Scots ancestry but born in the U.S. Through their wives and mothers, some were connected to Native cultures and communities: for example, George Fisher (Henry's son) was Odawa and Illinois as well as French on his mother's side; John Kinzie's mother, Nelly Lytle, had been adopted among the Senecas; and Hyacinth St. Cyr's wife, Keenoukau, was Ho-Chunk. Similarly Pierre Hurtibise's mother was from the nearby Dakota nation, and Augustin Grignon's ancestry was French and Ottawa.²

¹ *U.S. v. J. Barrell*, May 1824, Michigan [Territory] Circuit Court (Iowa County) Criminal Case files, 1824-36, Wisconsin Historical Society Library (hereafter, WHSL), Platteville, Iowa Series 20, folder 4 (The name is spelled as both Barrel and Barrell in the court documents); Elizabeth G. Brown, "Judge James Doty's Notes of Trials and Opinions: 1823-1832," *The American Journal of Legal History*, 9 (January-October 1965) 33. This trial probably took place on May 11 or May 12, 1824.

² Les and Jeanne Rentmeester, *Wisconsin Creoles* (Melbourne, FL: privately published, 1987) pp. 246, 330-31; "Narrative of Morgan L. Martin," *Collections of the State Historical Society of Wisconsin* (hereafter, WHC) vol. XI (1888), p. 386; Juliette Kinzie, *Wau-Bun: The "Early Day" in the North-West* [1856] (Urbana: University of Illinois Press, 1992) pp. 143-154; Jacqueline Peterson, "The People In-Between: Indian-White Marriage and the Genesis of a Métis Society and Culture in the Great Lakes Region, 1680-1830," Ph.D. Dissertation, University of Illinois at Chicago Circle, 1981 pp. 161,163; Elizabeth Baird, "Memoranda," typescript, Baird Papers, Box 4, Folder 1, Wisconsin Historical Society Library, Madison; James L. Hansen, "Two Early Lists of Mixed-Blood Sioux," *Minnesota Genealogical Journal*, vol. 6 (Nov. 1986), p. 5. The jurors were John Kinzie, Lewis Rouse, H.M. Fisher, Hyacinth St. Cyr, George Fisher, H. Boyer, Edward Pizanne, John Simpson, Pierre Hertibis, Augustin Grignon, James Lyon, Denis Courtois. Simpson and Hurtibis signed with an X. *U.S. v. J. Barrell*, May 1824, Iowa Series 20, folder 4, WHSL Platteville.

People of mixed Native and European ancestry like Fisher, Hurtibise, and Grignon would be called *métis* in Canada or *halfbreeds* by Anglo Americans, but they did not refer to themselves in these terms, preferring to think of themselves in cultural rather than "racial" terms.³ Whether of part-Native or purely European heritage, the old residents shared a distinctive and complex Great Lakes culture that differed considerably from that of New England and the other eastern United States. The francophones often called themselves *habitants*; outsiders frequently used the word *Creoles*, a descriptor that meant locally-born or of-the-local-culture (and often implied a French-Canadian connection) but did not carry the specifically Afro-French meaning people often associate with New Orleans nor the purely European ancestry implicit in the term *criollo* as used in Latin American history.⁴

This region experienced three waves of colonization: a French régime dating to the seventeenth century lost control to the English in 1763; the United States nominally gained hegemony at the end of the American Revolution but ruled only loosely until after the War of 1812.⁵ During the late eighteenth- and early nineteenth centuries hundreds of fur trade families had founded over fifty multi-racial, multi-cultural communities in the Great Lakes region, including Prairie du Chien, Green Bay, St. Louis, and others.⁶ During the first phase of U.S. colonization the army built forts between 1812 and 1816 and maintained garrisons in these communities.⁷

During the second phase, U.S. officials sought to establish the "American"

³ Harriet Gorham, "Families of Mixed Descent in the Western Great Lakes Region," in Bruce Alden Cox, ed., *Native People, Native Lands: Canadian Indians, Inuit and Metis* (Ottawa, Canada: Carleton University Press, 1988) 37-55.

⁴ These two terms will be used interchangeably here, and include both those of purely European and mixed ancestry. Les and Jeanne Rentmeester, *Wisconsin Creoles*, pp. v-iii; Mary Gehman, *Women and New Orleans, A History* (New Orleans, Margaret Media, Inc., 1988) p. 10; "Creoles," *The Iowa Patriot* 6 June 1839; for examples: Anna Maria Von Phul collection [c. 1816], Missouri Historical Society, St. Louis; Carl J. Ekberg, *French Roots in the Illinois Country: the Mississippi Frontier in Colonial Times* (Urbana, University of Illinois Press, 1998); Charles E. Peterson, *Colonial St. Louis: Building a Creole Capital* (Tucson, Arizona: The Patrice Press, 1993); Neil H. Porterfield, "Ste. Genevieve, Missouri," in John Francis McDermott, ed., *Frenchmen and French Ways in the Mississippi Valley* (Urbana: University of Illinois Press, 1969) pp.141-177.

⁵ Alice E. Smith, *The History of Wisconsin* (Madison: State Historical Society of Wisconsin, 1985) I:36-94, 203.

⁶ Jacqueline Peterson, "The People In Between: Indian-White Marriage and the Genesis of a Métis Society and Culture in the Great Lakes Region, 1680-1830" (Ph.D. diss., University of Illinois at Chicago Circle, 1981)

⁷ Helen Hornbeck Tanner, ed., *Atlas of Great Lakes Indian History* (Norman: University of Oklahoma Press, 1987) pp. 106-107.

political and court systems in the region. Given the population of the region—a large number of Indians, a smaller but significant number of Creoles, and a tiny population from the original thirteen United States—the “Americans” needed the support and participation of the Creoles to make the system work, and to dominate the Indians. The new American systems included elements of coercion, mediation, and consensus, some of which had also been practiced in Native and French Creole communities.

The *U.S. v. Barrell* took place at Prairie du Chien during the first session of the Additional Circuit Court of Michigan Territory for Crawford County. Idealistic officials of the colonizers' government, including Judge Doty, tutored the *habitants* in the workings of the new judicial system. Doty assured jurors and others attending court that this institution was not only just, but also an improvement over the previous régimes: "The criminal jurisprudence of this country . . . is . . . a more perfect system than older governments than this can boast." He continued, "If properly administered, there can be no doubt that life, liberty and property are amply secured. This high and responsible trust, gentlemen, has been confided chiefly to the magistrates and to jurors."⁸ The jurors had the responsibility to join him in enforcing the territorial laws.

Doty had lectured the grand and petit jurors, exhorting them “to the suppression of grog-shops, or irregular Taverns.” He had also had insisted that the jurors adhere to both the intent and the details of the new territorial laws. And they had ignored his advice, and found John Barrell *not guilty* of selling spirituous liquor by small measure without a license.⁹

Taverns in the Old Northwest were community centers, where neighbors socialized, travelers found bed and board, religious services and courts were convened, people danced, joked, brawled, and of course, drank.¹⁰ Harry Ellsworth Cole's study of early Wisconsin taverns described the “picturesque scenes” at these businesses in Prairie du Chien and Green Bay: “Costumes of the people ranged from army uniforms worn by soldiers and Parisian gowns of certain ladies of fortune, to buckskin garments and

⁸ Elizabeth Gaspar Brown, ed., "Judge James Doty's Notes of Trials and Opinions: 1823-1832," *The American Journal of Legal History*, 9:1 (January 1965) p. 31.

⁹ *U.S. v. J. Barrell*, May 1824, Iowa Series 20, folder 4, WHSL Platteville.

¹⁰ Harry Ellsworth Cole, *Stagecoach and Tavern Tales of the Old Northwest* (Cleveland: Arthur H. Clark Company, 1930) pp.17, 237-298. A more recent study by Elliott West made similar conclusions about the far west: *The Saloon on the Rocky Mountain Mining Frontier* (Lincoln: University of Nebraska Press, 1979).

moccasins of [I]ndians This variety and contrast in raiment produced a kaleidoscope of color, cut, and texture.”¹¹ One of Prairie du Chien’s inns was run by James Reed, whose stepson Antoine Grignon later characterized it as a sort of community center: “Around the fireplace in his tavern was often gathered an interesting throng of hunters, trappers, traders and Indians, and the usual town loafers. Many strange tales of frontier life and backwoods lore were told”¹²

The circumstances of this particular case were that John Barrell--a Vermont man who had served in the army from 1814 until 1819--was filling in for tavern keeper James Reed for a few months. Reed, who was also the deputy sheriff, coroner, and county tax collector, had been granted a one-year tavern license on May 12, 1823 by the County Court.¹³ Although Reed had needed to leave town for two months, he was required by law to maintain the tavern, so he had recruited Barrell to look after the business.¹⁴ Judge Doty felt that the license had not been properly worded, recorded, or granted by Crawford County's officials, and that “a license cannot be transferred.” The petit jurors, however, reported, “We the undersigned Jurors, do not find any cause of action against the prisoner at the bar brought before us.” Someone explained to them the proper language for a verdict, so the offending words were crossed out and the verdict amended: “We the undersigned Jurors, do find the prisoner at the bar brought before us not guilty--”.¹⁵

The judge wrote in his notebook, “I consider this verdict as contrary to law and evidence.”¹⁶ Prosecuting attorney James Lockwood, who was Doty's apprentice, used the same language when filing a motion for a new trial “on the ground that the verdict is

¹¹ Cole, *Stagecoach and Tavern Tales*, p. 181.

¹² Eben Pierce, “Indians Knew Reed as a Fearless Man,” *The Galesville Republican*, July 15, 1915.

¹³ Wisconsin Territorial Papers, County Series, Crawford County, “Proceedings of the County Board of Supervisors, Nov. 29, 1821 – November 19, 1850,” (Madison, Wisconsin: Wisconsin Historical Records Survey, 1941), hereafter “Crawford County Supervisors,” p. 3/1:6; Clarence E. Carter, ed., *Territorial Papers of the United States*, 28 volumes (Washington, D.C.: U.S. Government Printing Office, 1934-68) hereafter “TPUS” 11:383 (Thanks to Jim Hansen for bringing this source about Reed’s appointment as coroner to my attention); *History of Crawford and Richland Counties* (Springfield, IL: Union Publishers, 1884), vol. I, p. 364.

¹⁴ James Duane Doty, “Notes on Trials and Decisions,” Wisconsin Historical Society Library (hereafter, “WHCL”), Madison, Wis Mss DD, Box 3, typescript pp. 33-34; “An Act to Regulate Taverns,” [1819], *Laws of the Territory of Michigan* (Lansing: W.S. George & Co., 1871 and 1874) vol. 1, p. 407. [vol. 1 was published in 1871 and vols. 2 & 3 in 1874]; U.S. Adjutant General's Office, “Registers of Enlistments in the U.S. Army, 1798-1817,” National Archives microfilm M233, roll 1 as cited in James L. Hansen to Lucy Murphy July 1, 2008.

¹⁵ U.S. v. J. Barrell, May 1824, Iowa Series 20, folder 4, WHCL, Platteville.

¹⁶ Doty, “Notes on Trials and Decisions,” WHCL, typescript pp. 33-34.

contrary to Law and Evidence," a request apparently not granted.¹⁷ For the jurors, however, justice demanded that they ignore the advice about law and evidence. Through trials like this one, men like Doty learned that imposing control on the colonized was not easy when the colonized could use the system to assert their own sense of justice.

The jurors were at the nexus of a paradox: the conquest of colonization was coercive by nature, but it brought two new institutions that invited--and occasionally required--their participation. One was the unfamiliar institution of the ballot, with its concept of majority rule; the other was a court system which incorporated a locally novel process--trial by jury--based upon a concept very familiar to the *habitants*: that of consensus.

In the context of U.S. colonization of the Midwest, the case of *U.S. v. Barrell* was not only about drinking and morality, but also about control and autonomy. Like many other cases in the early United States court system in this region, it was a contest of power between the colonizers and the local community. The contest was made more complex because the new system permitted—sometimes even insisted on—participation by the colonized people in the process of administering the colonizers' institutions of government, but the colonized had their own ideas about justice and mediation.

Using Prairie du Chien as a case study, this article explores the Creole population's experiences with the new court system between 1824 and 1850, examining the tensions therein between colonizers, who sought to control the region while introducing democratic institutions, and *habitants* who often had their own agendas. Using selected court cases, memoirs, and data on jury participation, it argues that Creole officials and jurors actively sought to find fair and equitable solutions to community problems in the context of colonization, as they and their neighbors were adjusting to a new political reality: the domination of the United States over their community and economy. Sometimes their actions can be seen as rebukes to the colonizers, or as resistance to the processes of colonization or prescribed adjudication. Their independence and cultural differences eventually led officials to manipulate the system in order to marginalize the Creoles and so to solidify control. By examining this history in

¹⁷ U.S. v. J. Barrell, 1824, Iowa Series 20, folder 5, Motion for new trial, May 12, 1824, WCHL, Platteville.

the context of demographic change, we may understand the shift from an inclusive system to one that no longer needed the participation of most Creoles to maintain legitimacy and control.

COURTS

Before the United States colonization, several systems of justice had operated in the Midwest. Native tribes in the Great Lakes region had chiefs, councils of chiefs or elders, and family, clan, and band leaders who often worked to solve community conflicts.¹⁸ Legal philosophies in these communities differed from those of Europeans and Euro-Americans, as legal scholars Vine Deloria, Jr. and Clifford Lytle, pointed out. "The primary goal was simply to mediate the case to everyone's satisfaction. It was not to ascertain guilt and then bestow punishment upon the offender," they argued.

Under Anglo-American notions of criminal jurisprudence, the objectives are to establish fault or guilt and then to punish. The sentencing goals of retribution, revenge, and deterrence and isolation of the offender are extremely important

Under the traditional Indian system the major objective was more to ensure restitution and compensation than retribution.¹⁹

Individually or in council, chiefs and elders worked with people in conflict to find solutions or compromises acceptable to all that would reduce tensions, provide some restitution to injured parties, and promote community harmony. According to legal scholar Sydney L. Haring, Native American law historically addressed the "immediate need . . . to resolve the legal problem so that the community could move forward -- together."²⁰ Deloria and Lytle explained, "Under the traditional tribal system of justice, the ultimate decision was seldom made by a judge. Rather, the job of the mediator or

¹⁸ Charles A. Eastman, *The Soul of the Indian: An Interpretation* [1911] (Lincoln: University of Nebraska Press, 1980) pp. 108-110; Paul Radin, *The Winnebago Tribe* [1923] (Lincoln: University of Nebraska Press, 1990) p. 161; Nicholas Perrot, "Memoir on the Manners, Customs, and Religion of the Savages of North America," in Emma Helen Blair, ed., *The Indian Tribes of the Upper Mississippi Valley and Region of the Great Lakes* [1911-1912] (Lincoln: University of Nebraska Press, 1996) I: 141; Thomas Forsyth, "Account of the Manners and Customs of the Sauk and Fox Nations of Indians Tradition," in Blair, *Indian Tribes*, II: 186-187; Vine Deloria, Jr., and Clifford M. Lytle, *American Indians, American Justice* (Austin: University of Texas Press, 1983) p. 85.

¹⁹ Deloria and Lytle, *American Indians, American Justice*, p. 111.

²⁰ Sidney L. Haring, "Indian Law, Sovereignty, and State Law: Native People and the Law," in Philip J. Deloria and Neal Salisbury, eds., *A Companion to American Indian History* (Malden, MA: Blackwell Publishers, 2002) p. 445.

reconciling chief was to create an atmosphere for participant decision-making."²¹ Since community ideals emphasized an individual's membership in and responsibility to his or her family, clan, village, and tribe, misconduct was not to be dealt with individually, but by the communities involved.²² Consensus was a basic philosophy of community decision-making and a goal often reached in village meetings in which women as well as men participated.²³

Under the autocratic French system (which was continued under the British), the *Coutume de Paris* (formally known as the Customary Civil Laws of the Paris *Prévôté* and Viscounty) was the official legal code.²⁴ According to historian Peter M. Moogk, the French legal code as adopted in New France was based upon the idea that basic universal principles of behavior ought to apply without exception. In this system, judges "identified the general principle pertinent to the case and then applied it." This is in contrast to English Common Law with its emphasis on legal precedents and current practice. Furthermore, the *Coutume* emphasized family obligations but not individual rights.²⁵ Trials did not involve any type of jury in decision making.

Theoretically guided by the *Coutume* during the French régime, military commandants adjudicated conflicts at Green Bay's fort in an autocratic manner, according to historian Louise Phelps Kellogg, but these officers seldom visited Prairie du Chien. Absent such military personnel and under the British régime, the elite fur traders passed judgment and settled disputes. Kellogg argued that "a kind of traders' code developed, unwritten but powerful, according to which life in the Indian country was regulated and misdeeds punished. As far as it had any legal foundation this code was based upon the sacredness of contract, and rested upon the engagement bonds made by the *voyageurs*

²¹ Deloria and Lytle, *American Indians, American Justice*, p. 112.

²² Eastman, *The Soul of the Indian*, p. 94; Rudy Al James, "Traditional Native Justice: Restoration and Balance, not 'Punishment,'" in Wahinke Topa, ed., *Unlearning the Language of Conquest: Scholars Expose Anti-Indianism in America* (Austin: University of Texas Press, 2006) p. 113.

²³ Forsyth, "Account of the Manners," II: 187; Eastman, *The Soul of the Indian*, p. 42; examples may be found in Ellen M. Whitney, comp. and ed., *The Black Hawk War, 1831-1832*, 2 vols. (Springfield: Illinois State Historical Library, 1973); and Kenneth P. Bailey, ed. and trans., *Journal of Joseph Marin, French colonial Explorer and Military Commander in the Wisconsin Country, Aug. 7, 1753-June 30, 1754* (n.p.: published by the editor, 1975).

²⁴ Peter N. Moogk, *La Nouvelle France: The Making of French Canada -- A Cultural History* (East Lansing: Michigan State University Press, 2000) p. 62; Allan Greer, *The People of New France*, p.118.

²⁵ Moogk, *La Nouvelle France*, pp. 64 -65.

when entering the employ of the *bourgeois* or of one of the great companies."²⁶ The *Coutume*'s emphases on general principles rather than precedents or the details of statutes guided official and unofficial magistrates. In disputes between Indians and traders, elites from both communities typically negotiated resolutions. In the Creole towns, however, elite traders and other leaders sometimes handed down decisions autocratically to the lesser *habitants*.

Before 1824, fur traders such as those on the *Barrell* jury had experienced French- and British-Canadian colonial judicial systems and had also witnessed Native legal practices during their visits to Indian villages; many had learned Indian and Creole legal philosophies from their kin. Thus, they were familiar both with council or elder mediation and with autocratic justice based upon contract or ideal principles.

The court systems under the United States formalized the roles of mediation and coercion in different ways. They evolved as the region in question went from being under the jurisdiction of the Northwest Territory (1787), to Indiana Territory (1800), Illinois Territory (1809), the Territory of Michigan (1818), the Territory of Wisconsin (1836), and finally Wisconsin statehood (1848).²⁷ (See maps, figure 2.) Early territorial laws were measures that had been adopted in any of the original states; Michigan Territory formally repudiated the *Coutume de Paris* in 1810.²⁸

²⁶ Louise Phelps Kellogg, *The French Régime in Wisconsin*, pp. 398-399.

²⁷ Smith, *History of Wisconsin*, Vol. I, p. 683.

²⁸ *Laws of the Territory of Michigan, condensed, arranged, and passed by the Fifth Legislative Council. Together with the Declaration of Independence; the Constitution of the United States; the Ordinance of 1787; and the acts of Congress, relative to said territory* (Detroit: S. M'Knight, 1833), p. 563

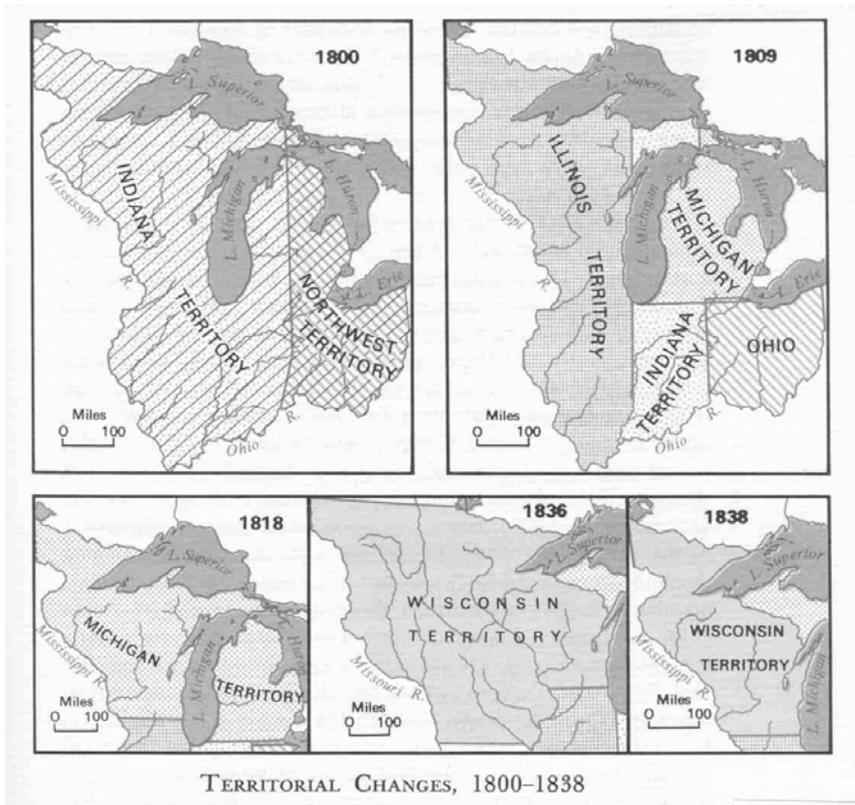


Figure 2: Territorial Changes, 1800 - 1838. Source: Alice E. Smith, *The History of Wisconsin: From Exploration to Statehood*, I: 201.

The new system introduced a hierarchy of courts. The appointed Justices of the Peace and their courts were at the most “inferior” level. These men were (according to Henry Baird, the first lawyer to practice in Green Bay) “selected from among those who were capable of reading and writing.”²⁹ They intervened in criminal cases needing immediate attention until superior courts could try them and took charge of minor suits and petty crimes.³⁰ These men, many of whom were Creole, seem to have continued the French legal tradition of focusing on basic principles rather than the details of statutes. A local writer commented about the 1820s in the 1884 *History of Crawford and Richland Counties*, “the magistrates who held court in [Crawford County] . . . knew little about law

²⁹ Henry Baird, “Recollections,” *Wisconsin Historical Collections* vol. 4, p. 209.

³⁰ *Laws of the Territory of Michigan* (Detroit: Sheldon & Reed, 1820) pp. 19, 214-215.

or mode of procedure [sic] in legal matters. They decided all matters according to their own notions of right and wrong”³¹ Some of them continued the autocratic role of previous magistrates.

County courts, led by judges who were “learned” but not lawyers, met once or twice a year to try more serious crimes, and heard appeals from the justices’ courts.³² These judges had little experience with the U.S. court system and only with difficulty learned about the territorial laws. It took more than two years for copies of Michigan Territory’s laws to reach Prairie du Chien after that region became part of Michigan Territory in 1818. During the 1820s, it sometimes took six or seven months for the news of new statutes passed in Detroit to reach Green Bay and Prairie du Chien.³³ “It should be remembered,” commented Prairie du Chien’s early prosecutor, James Lockwood, in a memoir, “that all these officers had to enter upon the duties of their several offices without forms to refer to or precedents of proceedings, and it can astonish no person that the records of that day are without much form.”³⁴ A local writer argued in 1884, “That justice was administered without much regard to the forms of law, at an early day, in Crawford county, is not to be charged against the justices of the county court as a dereliction of duty on their part. They were all men of the pioneer stamp and their honesty can not be impugned.”³⁵ The inexperience of these County Court judges and Justices of the Peace and their inexact records and processes would lead to conflicts with Judge Doty.

At the top of the territorial judicial hierarchy were the Circuit courts (an arm of the territorial Supreme Court), the judge arriving once or twice each year, accompanied by some circuit-riding lawyers. The Circuit courts heard appeals from lower courts, had concurrent jurisdiction with County courts, and tried capital cases and those worth over

³¹ *History of Crawford and Richland Counties*, I: 364.

³² Before 1827, in some circumstances it required two county court judges to try a case. *Laws of the Territory of Michigan* vol. 1 (1871): 184, 716; vol 2 (1874): 624; *History of Crawford and Richland Counties*, I: 365.

³³ James Duane Doty to James Clark, 16 March 1830, James Duane Doty Papers, letterbook pp. 49-51, microcopy, Bentley Historical Library, Ann Arbor, Michigan.

³⁴ James Lockwood, “Early Times and Events in Wisconsin,” *Collections of the State Historical Society of Wisconsin* (hereafter WHC) vol. 2 ([1856] rept. 1903) p. 116.

³⁵ *History of Crawford and Richland Counties*, I: 365

\$1,000 in penalties.³⁶ Doty was the first to serve as a circuit judge in what is now Wisconsin; his court serving Michigan Territory's Crawford, Brown, and Michilimackinac Counties was referred to as the Additional Court.

The “Additional” Circuit Court, was created in 1823 to serve residents of the territory who lived outside the region that would come to be called “the mitten,” today the state of Michigan’s lower peninsula. People living on the island of Michilimackinac, in the upper peninsula, and in what is now the state of Wisconsin had complained bitterly because all cases requiring the attention of the territorial supreme court were considered in Detroit, a distance of over five hundred miles from Prairie du Chien. The Additional Court would come to them.³⁷

A key difference between the new legal system and the old French Canadian tradition was the addition of juries. The right to trial by jury was—and is—guaranteed by the U.S. Constitution, the blessings of which policymakers meant to extend to the territories. For the colonizers, recruiting the colonized as jurors could be an important way to lure the Creoles into the new body politic. In this system, the concept of a jury of one’s peers could seem to give the community input into the imposition of the new regime, even though few Creoles were able to participate in writing the new territorial legal codes.

In the Supreme and County courts, juries were regularly impaneled, and in the inferior courts of the Justices of the Peace, defendants could request a jury. Grand juries were gathered once or twice each year at the county level to make decisions about indictments, and petit juries heard the cases. Jurors would have to leave their work and homes to attend court, although they would be paid, typically a dollar or two for their service. Jurors were required to be qualified to vote, which meant that they were male citizens, taxpayers, at least twenty-one years old and of European or mixed Native and European ancestry.³⁸

³⁶ Ira Brunson, “Judicial History,” pp.1, 10; Henry Baird, “Recollections,” WHC, vol. 4, p. 209.

³⁷ Alice Elizabeth Smith, *James Duane Doty, Frontier Promoter* (Madison: State Historical Society of Wisconsin, 1954) pp. 29-33.

³⁸ An 1820 law stated that all jurors must be qualified to vote for the delegate to congress, reiterated in the 1827 and 1833 laws. In 1821, the grand jurors were required to be freeholders, a measure not reiterated in later jury laws. The 1827 statute expected jurors to be “judicious persons” and allowed them to be challenged by either party for not having a “competent knowledge” of the English language, another measure not reiterated in the law of the following year. The 1833 law expected jurors to be “of good

For Creoles, the juries must have seemed like Indian village councils, in which pressing issues were discussed for as long as was needed to reach consensus. In their work as traders, voyageurs, and occasionally officials, these men had much experience visiting, observing, and participating in Native village life. Most were intermarried; many were the sons and grandsons of tribal members, and they knew the ways that wise leaders could work together with community members in council and behind-the-scenes negotiations to solve important problems without resorting to coercion. In Native political practice, if one person refused to go along with an important decision, mediation continued until a solution to the problem was reached. Similarly, petit juries required consensus. Creoles probably did not recognize a key difference in the consensus objectives of the two systems: while Native communities used consensus to make political decisions or solve conflicts, the U.S. system expected juries to come to consensus about the facts of a case and then apply the law as instructed by the judge.³⁹

Imposing Control

Judge James Duane Doty, a twenty-four-year-old born in New York, in 1823 came into the Creole communities of Michilimackinac, Green Bay, and Prairie du Chien as judge of this Additional circuit court to implement the “American” court system.⁴⁰ Ambitious, energetic, and anxious to get every detail right while (he hoped) teaching the

character” and raised the age qualification from 21 to 25 years. *Laws of the Territory of Michigan* vol. 1 (1871): 490-93, 789-90; vol. 2 (1874): 467; vol. 3: 1242. Each year beginning in 1827, the Crawford County Board of Supervisors (also known as Commissioners) drew up lists of jury members from names provided by the tax assessors, selecting the men who would be required to serve during the County court sessions. *Crawford County Supervisors*. County Commissioners/Supervisors were elected, beginning in 1825 (although they had been appointed before that time). *Laws of the Territory of Michigan*, vol. 2 (1874), p. 279, vol. 1 (1871), p. 661.

Laws defined voters in 1819 as “free white male” citizens over age 21 who had paid a territorial tax. In spite of a challenge to voters of mixed Euro- and Native American ancestry, they would not be excluded from the franchise. “Michigan Election,” U.S. House of Representatives 69, 19th Congress, 1st session, p. 7; “An Act authorizing the election of a Delegate from the Michigan territory to the Congress of the United States,” *Laws of the Territory of Michigan*. (1833) pp. 35-36. In 1827 a territorial law stated that those who paid their tax obligations by working on the roads could indeed vote. *Laws of the Territory of Michigan, Vol II, Embracing all Laws enacted by the Legislative Authority of the Territory, from 1806 – 1830*, (Lansing: W.S. George & Co. State Printers and Binders, 1874) p. 564. When Wisconsin became a separate territory, taxpayer requirements were dropped, and voters could include not only citizens but also six-month residents who intended to become citizens. *Statutes of the Territory of Wisconsin* (Albany, NY: Packard, Van Benthuysen & Co., 1839) p. 38.

³⁹ Thanks to Les Benedict for pointing out this difference.

⁴⁰ Smith, *James Duane Doty*, pp. 30, 35.

habitants to obey and appreciate the “American” system of justice, Doty was in many ways a typical instrument of colonization. Arrogant, dedicated to the institution, and apparently unaware of Creole traditions of negotiation and mediation, Doty arrived to set up his court as the supreme authority, trying the most important cases and superseding the decisions of the lower courts and their judges. Although local magistrates and other elites had adjudicated disputes here for a long time before the War of 1812, Doty felt his mission was to bring justice to the wilderness. An admirer and sometime neighbor, Albert Ellis, expressed this view in an 1868 article about Doty. “It was no easy task to inaugurate justice in these wilds; to create sheriffs, clerks and jurors, out of half breed Indian traders, *voyageurs*, and *courriers* [sic] *du bois*,” he wrote about the judge’s first winter at Prairie du Chien, 1823-24.⁴¹

On the other hand, Doty’s attitudes and actions and his court itself were obnoxious to many of the old residents in his new jurisdictions. In an 1856 speech, lawyer Henry Baird recalled that although the inauguration of Doty’s Additional Circuit Court established the “civil code and civil authority” (in Baird’s view protecting the liberties and property of citizens), many of the Creoles resented the change. He said, “this innovation on the primitive rights of the old settlers, was viewed by them with great jealousy. They looked upon it as a . . . serious infringement on their long established customs; and they heartily wished the court, and . . . the lawyers too, anywhere but amongst themselves.”⁴² In a memoir, Ebenezer Childs remembered the first jury trial at Green Bay. He himself was the plaintiff in a suit against “a Frenchman.” Childs recalled of the Creole defendant, “He and his friends were outrageous in their denunciations of the d—d Yankee court and jury.”⁴³

Thus, there were several sources of conflict. Creoles resented Doty’s ability to overrule local county court judges and justices of the peace. Doty’s elite judicial position ranked him above men who were older than he was, and often more familiar with the community. In a culture that valued and respected elders, Doty’s youth—he was twenty-four years old when appointed to this position in 1823—must have added to the tension

⁴¹ Albert G. Ellis, “Life and Public Services of J. D. Doty,” WHC, 5 (1868): 372.

⁴² Henry Baird, “Early History and Condition of Wisconsin,” WHC 2 (1856): 90-91; Ellis, “Life and Public Services of J.D. Doty,” also discussed the animosity between Doty and “the leading Indian traders,” in Prairie du Chien. p. 372.

⁴³ Ebenezer Childs, “Recollections,” WHC, 4 , p. 166.

of colonization. This young man lectured to, overruled, and punished his elders—in blatant contradiction to both Creole and Native social and political patterns, in which leaders gained their authority from years of generosity, networking, problem-solving, mediation, wise advice to others, and economic or military prowess. Kin ties had also been required for local prominence. However, Doty had demonstrated none of these before assuming such a high position in these communities. To make matters worse, not only was his wife Sarah Collins Doty an outsider from New York rather than a local daughter, but she was a snob, refusing to socialize with the other residents after moving to Prairie du Chien in the fall of 1823.⁴⁴ The behavior she modeled was completely opposite to that expected of Native and Creole wives of men with political clout. Elite women in communities such as Prairie du Chien ideally served as intermediaries, connecting people of different families, tribes, and cultural backgrounds with charity, hospitality, leadership, and assistance with conflict resolution.⁴⁵

Doty's inflexible interpretations of the statutes, forcing obedience to the colonizing regime, only exacerbated problems with the Creoles. In the *Barrell* case and others, Doty argued that local and county institutions had not done their work in the exact ways mandated by the colonizers (i.e., the territorial legislators and the governor). Never mind that local judges were hampered by the fact that printed copies of the laws often did not arrive in Wisconsin until long after they had been passed, and some of them were changed often, making it all the more difficult for inexperienced jurists and other officials to avoid having their decisions negated by Doty on technicalities. And, as Henry Baird conceded, many of the territorial laws of that time “were crude and ill-devised.”⁴⁶ Although Doty's inflexibility must have seemed, to the Creoles, contrary to common sense and reason, his objectives went beyond finding just solutions to community conflicts: he was also implementing the new government's institutions and forcing the local people's acquiescence to the authority of the territory and the United States.

Cultural differences and racism probably added to the tension. As Doty lectured

⁴⁴ Smith, *James Duane Doty, Frontier Promoter*, pp. 39, 53.

⁴⁵ For further discussion of women's ideal roles, see Lucy Eldersveld Murphy, “Public Mothers: Native American and Métis Women as Creole Mediators in the Nineteenth-Century Midwest,” *Journal of Women's History* special issue on “Revising the Experiences of Colonized Women,” Vol. 14, no. 4 (winter 2003) pp. 142-166; Eastman, *Soul of the Indian*, pp. 41, 42, 102.

⁴⁶ Henry Baird, “Early History,” p. 95. During the early territorial period, the legislative council could only adopt laws already adopted in other states. Smith, *History of Wisconsin*, I; 207.

them in the courtroom, Creoles heard official attitudes about Native people, including their friends and kinfolk. For example, he addressed a Grand Jury in Green Bay on June 15, 1830, with regard to the rights of Indians under the law. Although Doty supported both the legal doctrine of sovereignty for tribes (he believed Indians should adjudicate Indians' crimes committed in their own country based on their own traditions of justice), and their right to bring suits in court, his message was mixed.⁴⁷ He stated that Native tribes' rights to their lands "have never been 'secured' or 'granted' to them by any Treaty with the United States" (an inverted logic from a Native point of view).⁴⁸ If anyone had trouble following Doty's rambling legal arguments, it would be hard to miss his statement that "the Indian who is barely human," must be in "dependence and pupilage" with "the whites."⁴⁹ For those with Native mothers, wives, grand parents and other family members, such a statement must have rankled. In addition, his vigorous prosecution of men who were married according to the "custom of the country," was extremely troubling.

One way Doty asserted the domination of the new government over the lives of the *habitants* was through his campaign to enforce the new laws about sex and marriage. As he inaugurated the Additional Circuit Court of Michigan Territory at Prairie du Chien and Green Bay, Doty instructed the grand juries to indict thirty-one men for fornication, including many of the Creole elites, because their marriages had been contracted according to the "custom of the country" without formal licenses.⁵⁰ These indictments contained strong language, alleging, in a typical example, that "Augustin Asselin . . . being an unmarried person of Lewd, Lascivious, depraved and abandoned mind and disposition, and wholly lost to all sense of decency, morality and religion . . . did unlawfully and wickedly . . . live and cohabit as man and wife with a woman by name the little Pine alias La

⁴⁷ Doty, "Notes on Trials and Decisions," WHCL, typescript pp.121-127; Patrick J. Jung, in "Judge James Duane Doty and Wisconsin's First Court: The Additional Court of Michigan Territory, 1823-1836," *Wisconsin Magazine of History*, Winter 2002-2003, pp. 32-41, argues that Doty's "views concerning Indian societies were particularly progressive for his day." p. 35.

⁴⁸ Doty, "Notes on Trials and Decisions," WHCL, typescript p.122.

⁴⁹ Doty, "Notes on Trials and Decisions," WHCL, typescript p.123.

⁵⁰ Jung, "Judge James Duane Doty," p. 31; Jacqueline Peterson, "The People In-Between," counted thirty six at Green Bay, p. 1; see also Bethel Saler, "Negotiating the Treaty Polity: Gender, Race, and The Transformation of Wisconsin from Indian Country into an American State, 1776-1854," Ph.D. dissertation, University of Wisconsin, 1999, p. 259.

grosse Boulanger of Lewd and dissolute habits, and . . . did comit [sic] whoredom and Fornication . . . divers disturbances and violations of the Peace of our said Territory and dreadfull filthy and Lewd offences in the same house . . .” Further, the indictment alleged that Asselin had done this “with intent to corrupt the morals of the Citizens of this territory, stir up and Excite in their minds filthy, Lewd and unchaste desires and inclinations to the great scandal and subversion of religion and good order to the great corruption of the morals and manners of the citizens....in contempt of the laws of this Territory.”⁵¹

With such indictments, besides asserting the right of the new government to dictate the terms of their intimate relationships and challenging the very bases of their families, the courts insulted Creole mothers and fathers, and attributed “evil” motives to them. Such language may have been derived from court practices of the northeastern states, but those states’ courts seldom prosecuted fornication by this time, and the New York Supreme Court had issued a ruling legalizing common law marriage, a decision that was widely accepted.⁵²

Thus, the new Additional Court was not simply extending to the Wisconsin region of Michigan territory the legal practices of eastern states, but asserting the regime's control while making a complex statement about Creole couples and intermarriage. Not only did these indictments allow men like Doty to express emerging Victorian morality about marriage and sexuality, but they had more serious implications for Native women and their property. Within a few days, most of the couples indicted for fornication did marry as the statute prescribed. Fornication indictments, by forcing marriage according to the laws of the territory, ultimately made Native and métis women subject to the laws of the United States, forced coverture on them, and gave their property to Euro-

⁵¹ United States vs. Augustin Asselin, Indictment for fornication, 9 May 1825, Iowa Series 20, WHSL, Platteville.

⁵² William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830* (Cambridge, Massachusetts: Harvard University Press, 1975), p. 110; Kermit L. Hall, *The Magic Mirror: Law In American History* (New York: Oxford University Press, 1989), p. 154. The case was *Fenton v. Reed*, 1809.

American and métis men. It also gave the colonizers authority over their children.⁵³

Ironically, Doty eventually lost his job over the issue of marriage. Among the many people Doty had antagonized were numerous military officers, whose power over civilians Doty sought to minimize. One of them, Colonel David Twigg (who himself had a child by an "illegal" relationship with Julia Grignon, who was of Ho-Chunk and French heritage) wrote to President Andrew Jackson in 1831 after the death of Rachel Jackson, saying that he had heard Judge Doty make disparaging remarks about Mrs. Jackson's character. The President, of course, was still bitter over the public scandal that had erupted over the question of whether he and his wife had been legally married, feeling that the viciousness of the controversy had hastened her death. Doty was soon removed from office, and David Irvin of Virginia appointed in his stead.⁵⁴

Courts would enforce the laws of the new régime. For Creoles, the meaning of colonization by the judicial system emerged as judges instructed jurors and others attending court about the new laws, and suggested the wording of indictments that the judges often instigated. For the colonizers, indictments were ways to impose the rule of the government on the local people, including Creole elites as well as the common *habitants*. Even if the accused were not convicted, the written accusations and summonses to appear asserted the regime's power to legislate, evaluate, and punish as well as to mediate disputes. Indictments for selling liquor mandated submission to government licensing; suits for debt ensured that the government could regulate property and obligation. Fornication and adultery charges asserted the new territorial government's right to regulate people's intimate relations, while humiliating Creoles who followed Native domestic patterns. Court-ordered marriages brought Native women within the control of U.S. and territorial laws. But the system required the cooperation of the local people as grand jurors to indict, and as petit juries to convict.

⁵³ Lucy Eldersveld Murphy, "American Indian Women, Mixed Families, and Colonization in 19th Century Wisconsin," forthcoming.

⁵⁴ Smith, *James Duane Doty*, pp. 93-95; "A Famous French-Winnebago Resident," typescript, Henry S. Baird Papers, Box 4, Folder 4, Wisconsin Historical Society (no date; author was probably Henry or Elizabeth Baird).

Creoles in Court

By including their men in the judicial system from the beginning, Governor Lewis Cass sought the cooperation of many Creoles. Some elite men were appointed to positions as Justices of the Peace and County Court judges during the early years. In Prairie du Chien, for example, two of the first three County Court judges were Indian agent Nicolas Boilvin (whose first wife, Wizak Kega, had been Ho-Chunk and whose daughter Catherine Myott was an important interpreter and mediator), and fur trader François Bouthillier.⁵⁵ The third was John W. Johnson, the U.S. “factor” (government trader) whose first wife Tapassia (and three daughters) were Sauk-Mesquakie.⁵⁶ Johnson, while not strictly Creole, was something of an insider-outsider by way of his marriage and children. Boilvin and Johnson were also early Justices of the Peace.

Between 1818 and 1836, out of twelve justices of the peace who served in Prairie du Chien, five were Creole and another was Johnson. Out of eight county court judges appointed during that time, five were Creole.⁵⁷

Throughout the territory, men of mixed ancestry were active in a wide range of political roles. As Thomas C. Sheldon, a six-year resident of Michigan Territory affirmed when the 1825 election raised the issue of biracial voters (ultimately permitting the métis to vote), the “population of mixed blood . . . have never been denied the right of white men;” and he added, “that he has repeatedly known persons of this description to vote, to set as Jurors, and that they have also held, and do now hold, county offices—viz, Justices of Peace, Coroner &c.”⁵⁸ This was quite true in Prairie du Chien’s Crawford County, where métis men were among those serving in all these capacities. For example, Joseph Brisbois (whose mother had been of French, Ottawa, and Illini descent) served as justice of the peace

⁵⁵ Ira Brunson, “Judicial History,” p. 5; Peter Lawrence Scanlan, *Prairie du Chien: French, British, American* (Menasha, Wisconsin: The Collegiate Press, George Banta Publishing Company, 1937) 184.

⁵⁶ Murphy, *A Gathering of Rivers*, 106-109; “A List of the Sac and Fox half breeds, who claim land according to the Treaty made at Washington City with the Chiefs Sac and Fox Tribes on 4th August 1824,” Thomas Forsyth Papers, Lyman Draper Manuscripts, microfilm, 2T, pp. 21-23, WHSL, Madison.

⁵⁷ James L. Hansen, comp., “Crawford County Public Office Appointments,” extracted from Carter, TPUS vol. 10 – 12, and Michigan Territory, “Records of Acts and Proceedings of the Executive Department,” Library of Congress, “Early State Records,” [microfilm], unpublished. Thanks to Jim Hansen for sharing this resource.

⁵⁸ Affidavit of Ebenezer Reed, Oct. 31, 1825, TPUS 11:774; Jeremy Mumford, “Métis and the Vote in nineteenth-Century America,” *Journal of the West*, Summer 2000, vol. 39, no. 3, pp. 38 - 45; Sister M. Rosalita, “A Page from Pioneer Politics,” *Michigan History Magazine*, vol. 23 (1939) pp. 377-390.

and clerk of the Crawford County court and as a representative in the Wisconsin Legislative Assembly in 1839 – 1840. He was also appointed to serve as an associate justice of the County Court for at least one year in the mid-1830s.⁵⁹

If the justices of the peace and judges of the county courts included some elite Creole men from their own communities, the lawyers were outsiders, virtually all Anglos.⁶⁰ Wholly Native men and women appeared in courtrooms as defendants and witnesses, but never as jurors, lawyers, or judges. Similarly, non-Native and Métis women could be defendants, witnesses, and plaintiffs, but otherwise they were kept on the margins of the proceedings.

Creole men, whether métis or not, made up the vast majority of Prairie du Chien's jurors in the early years, from 1823 to about 1836. During the 1820s, juries in County Court cases ranged from 75% to almost 94% Creole, according to jury lists recorded by former County Court justice Ira Brunson.⁶¹ In the early 1830s, between 59% and 91% of petit jurors were Creole, according to a sample of cases recorded in the Crawford County Courthouse.⁶² (See table below.)

⁵⁹ “The Mackinac Register, WHC 18: 490, 492; B.W. Brisbois, “Traditions and Recollections of Prairie du Chien,” WHC 9 (1882) pp. 282-316; Peterson, “The People In-Between,” p. 161; Susan Sleeper-Smith, “Women, Kin, and Catholicism,” in Rebecca Kugel and Lucy Eldersveld Murphy, eds., *Native Women's History in Eastern North America before 1900: A Guide to Research and Writing* (Lincoln: University of Nebraska Press, 2007) pp. 234-255. *History of Crawford and Richland Counties*, I: 355; Hansen, comp., “Crawford County Public Office Appointments.”

Generally speaking, however, men whose mothers were wholly Native seemed to have less-powerful roles than those who were second- or third-generation métis.

⁶⁰ Brunson, “Judicial History,” pp. 6,7,11,12. The exception was Theophilus LaChappelle, who was Dakota and French, a lawyer who during the 1840s represented Crawford County in the Wisconsin Territory Legislative Council, then became insane, murdered a man, and was institutionalized for the rest of his life. Brunson, “Judicial History;” *History of Crawford and Richland Counties* p. 356; Elizabeth Baird, “Reminiscences of Life in Territorial Wisconsin,” WHC 15 (1900), p. 255.

⁶¹ Brunson, “Judicial History,” pp. 2-5. The numbers are: 1823: 9/12 petit jurors, or 75%; 1824: 15/16 grand jurors, or 93.8%; 1826: 20/22 grand jurors or 90.9% and 28/36 jurors or 77.8%.

⁶² “Book A,” 1830-32; and sample court cases, Crawford County Courthouse, Prairie du Chien. Jury lists for this period are rare and fragmentary.

Table 1: Petit Jurors, Prairie du Chien, 1823 - 1833, Percent Creole⁶³

1823	9/12	75.0%
1826	28/36	77%
1831	8/12	66.7%
1832	13/22	59.0%
1833	11/12	91.7%

Ultimately, the *habitants* were not as easy to control as Cass, Doty, and other officials had hoped; trials often raised complex issues and revealed complicated dynamics of personal and institutional power.

The case against John Barrell and by implication, James Reed, expressed a number of tensions between the colonizers and the colonized. Why did the jury rule in favor of Barrell and against Doty's advice? First, it was a matter of protecting one of their own. The case as presented by Doty criticized Reed for improperly conducting his tavern and by hiring Barrell.

Was someone picking on Reed? In the same week that the *Barrell* case came to trial (perhaps even on the same day), Reed appeared as a defendant in another case. Although Reed had a tavern license, he had been charged three months earlier in February 1824 on complaint of Nicholas Boilvin that he “kept an improper house and that he was selling spirituous liquors and debauching away his servants.” Justice of the Peace James Lockwood had taken Boilvin’s complaint and depositions from three Creoles—Baptiste Barrette, Amable Petit, and Nicholas Cadoret--admitting that they had purchased liquor “by small measure less than one quart” from Reed, who had to post a \$200 bond guaranteeing his appearance at the May court. On May 12, Reed entered a plea of “not guilty” and the case against him was eventually dropped.⁶⁴

Reed was considered a member of the Prairie du Chien community. Although he had arrived with the army, he had married Marguerite Oskache (who was Potawatomi and/or Ojibwe), and he had since been discharged. Reed spoke French as well as several

⁶³ 1823 and 1826 data from Brunson, "Judicial History;" 1831 and 1833 data from Crawford County Court Records, sample cases; 1832 data is from Crawford County Courthouse, "Book A, 1830 - 32", 2 cases.

⁶⁴ United States vs. James Reed, Iowa 20, folder 69, Wisconsin Historical Society, Platteville. This case was marked "Nolle Prosequi, May 8, 1826 JH Lockwood."

Indian languages, and while a soldier had worked at carpentering side jobs, helping to build many of the local houses, during which he seems to have made friends.⁶⁵ He was also, as we have seen, a deputy sheriff, coroner, and county tax collector.

Second, we see here a tension between two different approaches to controlling the consumption of alcoholic beverages. On the one hand, Yankees like Doty and the territorial lawmakers viewed drinking establishments as wicked. On the other, the community considered drinking as routine but targeted drunks rather than vendors for control. Doty had heard that many in the local community were reluctant to prosecute bar keepers. "I am told, Gentlemen," he warned the grand jury, "that it is the opinion of many members of this society, that they owe no duty to the public upon this subject, except such as may chance to consort with their interest." However, he insisted that "the laws must be enforced."⁶⁶ He told the grand jurors that, "Taverns are for the convenience of travelers, and under proper regulations can never be sunk into grog-shops; and if any one should assume this latter character, it becomes a crying evil, and demands your immediate interference." Moreover, he described grog-shops and "irregular taverns" as "those places of resort for the idle and intemperate, and haunts of dissipation and almost every species of crime."⁶⁷

Drinking and revelry were common activities in Prairie du Chien, according to the diary of a Vermont man who lived there from 1817 to 1819. Willard Keyes commented disapprovingly about local activities on the Sabbath, "it is the custom with many here to spend this day in riot and drunkenness."⁶⁸ Prairie du Chien's residents, visitors, and soldiers from Fort Crawford frequently spent their Sundays and holidays drinking and with activities such as ball playing (probably lacrosse), billiards, horseracing, boxing, and

⁶⁵ James L. Hansen, "Crawford County, Wisconsin Marriages, 1816-1848," *Minnesota Genealogical Journal* vol. 1 (May 1984) p. 54, and Hansen, "Prairie du Chien and Galena Church Records, 1827-29," *Minnesota Genealogical Journal* vol. 5 (May 1986) p. 18. Eben D. Pierce, "James Allen Reed: First Permanent Settler in Trempealeau County and Founder of Trempealeau [Wisconsin]" Wisconsin Historical Society, *Proceedings* 1914, 108; Eben D. Pierce, "Reads Like Romance: Life of James Reed," *The Galesville Republican* July 8, 1915; Pierce, "Indians Knew Reed as a Fearless Man," *The Galesville Republican*, July 15, 1915.

⁶⁶ Brown, "Judge James Doty's Notes," p. 33.

⁶⁷ U.S. v. J. Barrell, May 1824, Michigan [Territory] Circuit Court (Iowa County) Criminal Case files, 1824-36, WHSL, Platteville, Iowa Series 20, folder 4; Elizabeth G. Brown, "Judge James Doty's Notes of Trials and Opinions: 1823-1832," *The American Journal of Legal History*, 9 (January-October 1965) 33.

⁶⁸ Willard Keyes, "A Journal of Life in Wisconsin One Hundred Years Ago," *Wisconsin Magazine of History* vol. 3, no. 3 (March 1920), pp. 339 – 363, and vol. 3, no. 4 (June 1920). Quote is from p. 354.

gambling. Both Euro-American and Native dancing were common in town, some of it accompanied by strong drink.⁶⁹

An 1816 territorial law prohibited the sale of alcoholic beverages to minors, apprentices, soldiers, militia men while in service, and to Indians, and an 1819 act required vendors of individual drinks to be licensed.⁷⁰ To complicate the matter, the laws prohibiting the sale of liquor to Indians (many of whom would suffer greatly from alcoholism resulting from the trade), created tensions between the fur traders who dispensed whiskey, tavern keepers, Indians who wanted to drink, Indians who didn't think they should, and government officials who felt they should protect them from the liquor trade. Furthermore, it must have been difficult for some to determine whether a person of mixed ancestry was entitled to buy a drink.

The local community had a different philosophy about these issues. Prairie du Chien's borough council had addressed the problems of inebriation by passing several ordinances in 1822 and 1823 that focused on those who drank to the point of becoming antisocial, rather than punishing the tavern keepers. This community, in which most of the wives and mothers were Native or métis--and had ties to Native communities in which women had a voice in politics--codified color and culture into these laws in ways that suggested that Indians were less dangerous than "white persons." The first alcohol-related ordinance stipulated that that "any Indian intoxicated in the streets making a noise and disturbing the peace shall subject himself to imprisonment and there remain until he gets sober."⁷¹ The wording of this ordinance made the incarceration seem voluntary, imposed no fines, and avoided any language of coercion.

This measure regarding intoxicated Indians was enacted soon after a law mandating punishment for "all white persons seen skulking or sneaking about after 10 o'clock at night within the enclosing of any lot in this village" which

⁶⁹ Keyes, "Journal of Life in Wisconsin," pp. 353, 354, 358, 443, 444, 445, 452, 453.

⁷⁰ *Laws of the Territory of Michigan*, 1871, I: 201, 407. Another law passed in 1821 reiterated the ban on liquor sales to Indians, but also stipulated that anyone who did so had to give back to the Indian whatever had been given in exchange. *Ibid*, I: 923.

⁷¹ "By-Laws enacted and passed by the Warden and Burgesses for the Borough of Prairie des Chiens this 20th day of March 1822," Register of Deeds Office, Crawford County Courthouse, Book: Deeds B (in the back, upside down) Section 26.

imposed a fine.⁷² Prairie du Chien's Borough Council met in a town meeting -- a format strikingly similar not only to early New England town gatherings but also to Native community political meetings. It is likely that Prairie du Chien's Native-descended women had voiced their concerns about "whites" to their husbands, sons, and brothers and to the members of the borough council. For these women, it must have been unnerving to sense that "white" men were lurking in the darkness outside their homes. (Ironically, this inverts the pioneer trope of Indians skulking around frontier cabins, threatening white wives and children.)

The following year in 1823, "An Act to establish a Patrol" made clear that soldiers from the local Fort Crawford were disturbing the peace, particularly when intoxicated. These were probably the "white persons" they worried about, men who were not only outsiders but also part of the conquering army. While Indians were to be jailed until they sobered up (and, by implication, released in the morning), the 1823 law aimed at soldiers empowered patrols composed of male residents to detain intoxicated and suspicious persons overnight until they could bring the offenders before a magistrate "to be disposed of according to law."⁷³ These regulations were much more coercive and punitive than the law regarding intoxicated Indians, suggesting that the local community felt drunken soldiers and other "white persons" were more dangerous than tipsy Indians, and that it was the drinkers rather than the barkeepers who should be controlled and punished.

Third, this was a clash between local courts and their officials on the one hand, and the territorial court and Anglo outsiders on the other. Reed had been trying to comply with the law: he had gone to the County Court for a license which had been signed by the county clerk, and had gotten permission to move his residence during the year from Creole judges Joseph Rolette and François Bouthillier. Because the territorial law regulating taverns required that the inn be consistently maintained, he had arranged for Barrell to step in for him during his absence. Doty's complaint that there seemed to

⁷² "By-Laws," March 20, 1822, Section 15.

⁷³ "By-Laws," November 20, 1823. The law empowered the Warden (chairman of the borough council) to organize the local men into nightly patrols when necessary. It also mandated that "whenever the cry of 'soldiers,' is made or any public disturbance is heard in the night times within said Borough, the Warden or either of the Burgesses shall have power to call upon any or all of the inhabitants of said Borough to assist in resisting, seizing and quelling those who may have caused such disturbances . . ."

be no record of the County Court's proceedings and that the license had not contained the exact language ("they made no 'resolve,' as is required") required by territorial statute challenged the legitimacy of local rule. It implied that if some minor details demanded by lawmakers in far-away Detroit had been neglected, the efforts—and power of—local officials were null and void. It was an insult to Rolette, Bouthillier, and other local officials. The jury acting as a local men's council mediated the conflict themselves. In the spirit of Native collective leadership and the French reliance on basic behavioral norms, the group refused to punish Barrell. After all, no one had been injured.

Doty had told the jurors how he thought they should rule, yet they refused to concede the territorial government's right to punish a local man based upon a strict interpretation of some territorial laws—when the man and his friend had clearly tried to comply. They refused to endorse a verdict that would have criticized, by implication, the local County Court judges and local government administrators, for imperfect implementation of the territorial laws, statutes which expressed a philosophy about the control of alcohol which was at odds with the local approach to this issue.

Ironically, both Reed and Barrell had been soldiers of the conquering army, but Reed had become a respected member of the local community, had intermarried, and held several local offices. Little is known about Barrell, who seems to have left town soon after this. A decade later in 1834, Reed would be elected tax collector for Crawford County, indicating his continued popularity with his neighbors.⁷⁴

Cases like this one demonstrate the difficulty for Doty and other Anglo officials of trying to control the Creoles with laws intended to be enforced in the court system, especially when the *habitants* could as jurors hinder, modify, or block the legislation's implementation. Eventually, Doty and other officials would find ways of adjusting the system to limit the participation of the *habitants*.

Another challenge

Jurors were not the only ones to protest domination by the Additional Circuit Court and its judge. That same week, during the inauguration of the Additional Court at

⁷⁴ Entry for Sept. 15, 1834, "Election Record of the Territory, 1823 - 37," Fort Crawford Museum archives, Prairie du Chien, WI.

Prairie du Chien, an incident took place involving elite fur trader Joseph Rolette which reveals more of the tensions in a system where local men were given some authority, but were trumped by representatives of the new colonizing regime. Rolette's protest and punishment provide an unusually well-documented case illustrating the resentments between the Creoles and the outsiders sent in to implement and enforce the new laws.

Joseph Rolette was an elite Creole Prairie du Chien fur trader, born in Quebec, who badly wanted to maintain a position of authority under the new regime, and seemed to be acquiring official recognition through political office. Although he had publicly supported the British during the War of 1812, as had a large percentage of the population, he gained U.S. citizenship through the courts in 1823 at Mackinac.⁷⁵ He had been appointed an associate justice of the County Court in 1821, a role that was combined with that of County Commissioner;⁷⁶ he was also in 1822 elected Warden (chair of the town council) of the Borough of Prairie du Chien, a post he still held in 1824.⁷⁷ Yet, he protested the imposition of Doty's Additional Circuit Court in 1824.

Rolette must have felt betrayed by Doty. He had graciously invited Doty and his wife to stay in his home over the previous winter (1823-24), an invitation they accepted. Yet in October of 1823 when Rolette and Alexis Bailly got into an argument which resulted in Bailly bringing slander charges against Rolette, rather than mediating the conflict, Doty demanded bail in the amount of \$5,000. To make matters worse, over the winter Doty tutored Rolette's rival James Lockwood in the law, urging Lockwood to accept the position of Prosecutor.⁷⁸

Furthermore, Doty's court had concurrent jurisdiction with the County Court, of which Rolette was one of the justices; Doty convened his court at the exact time the County Court attempted to meet and appropriated some of its cases: the County Court

⁷⁵ Martinus Dyrud, "King Rolette," typescript, n.p. and p. 1, Collection of Villa Louis Historic Site, Prairie du Chien [1823 timeline]; thanks to Michael Douglass for sharing this resource.

⁷⁶ Territorial Papers of the U.S., 11: 135; Mi, 1:139 from James L. Hansen, "Crawford County Public Office Appointments."

⁷⁷ Scanlan, "*Prairie du Chien*, p. 190-91; Borough of Prairie du Chien, "By-Laws;" Territorial Papers of the U.S., 11: 135; Mi, 1:139 from James L. Hansen, "Crawford County Public Office Appointments;" Territorial Papers of the U.S., 11: 135; Mi, 1:139 from Jim Hansen; Martinus Dyrud, "King Rolette," ms, n. p. , Collection of Villa Louis Historic Site, Prairie du Chien [re:1822].

⁷⁸ Smith, *James Duane Doty*, p. 56-57; Lockwood, "Early Times and Events," p. 175

had to recess for a week “for want of juries.”⁷⁹

Rolette’s challenge took place as Doty heard an appeal in the matter of *Charles Giasson vs. J.H. Lockwood*. Giasson as Marshal of the Borough of Prairie du Chien (of which Rolette was Warden and Lockwood 2nd Burgess) had attempted to use the Justice of the Peace court to enforce a regulation against Lockwood, who was Rolette’s rival.⁸⁰ It seems that Lockwood’s chimney had become dirty enough to catch fire, in violation of a local ordinance, and Lockwood had been found guilty and fined by a Justice of the Peace. Doty reversed the judgment of the lower court based upon technicalities in the language and form of the indictment, ruling that the Creole marshal, Giasson, should pay the costs of both courts.⁸¹

While Doty's court was in session, Rolette stood outside loudly denouncing the “damned rascally court,” and all who participated, warning Giasson that he could get no justice from Doty so he should demand a jury trial. Evidently, he objected to the outsider Doty and his court being able to challenge the actions of the local borough council's marshal and to negate a decision by a local justice of the peace. Further, his desire to have a jury decide the case suggests that Rolette felt local jurors were more likely to deliver justice than a Yankee judge. As the system of adjudication by elite traders such as Rolette crashed, the mediation-by-council model seemed preferable to Doty's inflexible system.

When he was charged with contempt of court, Rolette contritely claimed that he had been drunk and could not remember what he might have said. His punishment was a public scolding and a ten-dollar fine.⁸² Even so, Rolette was continued as a Judge of the County Court through 1826, suggesting that Governor Cass still needed his support for the new regime, and continued to pursue acquiescence through participation.⁸³

⁷⁹ Ira B. Brunson, “Judicial History,” p. 9; Smith, *James Duane Doty*, 58; Iowa Series 20 court cases (re: dates concurrent with County Court).

⁸⁰ Doty, Notes on Trials and Decisions, typescript pp. 36-38; Lockwood, “Early Times and Events,” p. 175; Borough of Prairie du Chien, “By-Laws” for 1823.

⁸¹ William W. Blume Papers, Bentley Library, card file, box 12.

⁸² Doty, “Notes on Trials and Decisions,” typescript, pp. 38 – 41; Alice Smith, *James Duane Doty, Frontier Promoter* p. 59.

⁸³ Brunson, “Judicial History,” p. 2. After several years in which the County Court did not meet, Governor Lewis Cass in 1830 reappointed Joseph Rolette as a County Court judge, but several Anglos complained, and he was subsequently removed, although he continued as justice of the peace through at least 1834. Lockwood, “Early Times and Events in Wisconsin,” p. 172, Brunson, p. 6; Hansen, “Crawford County

Instruments for individual actions

Of course, Creoles used new institutions for their own ends. Men like Rolette tried to negotiate the new political realities and shifting alliances, at some moments publicly venting their frustrations with the colonizers' system, at other times using what authority they had to influence outcomes. The county, circuit, and justice of the peace courts did provide them some opportunities for agency.

Some individuals used the courts to resolve their personal conflicts. A slander case might be used in lieu of a duel, in the absence of other mediation. For example, Alexis Bailly's suit against Joseph Rolette in 1823 arose because Rolette had said that Bailly "was a liar, & a thief; that he had struck his father; and that he was a swindler."⁸⁴ A husband might use the court to try to control a wife. To illustrate, Prudent Langlois in 1825 went to Justice of the Peace James Lockwood to complain that his wife, Margaret Manikikinik (probably a Native woman), had been sleeping with Louis Cardinal.⁸⁵ Had they been living in a Native community, family mediation and/or divorce would have been their options.

Others brought their disputes to the courts for resolution: Michel St. Cyr, for example, was upset in 1839 because Benjamin Boudrie ejected him from his family's land, a measure submitted to the court, in this case probably the Justice court.⁸⁶ Couples who had married according to the law also needed the court's permission to divorce. Julia Antaya, for instance, went to court in 1833 to ask for the dissolution of her marriage from Chrysostome Antaya, whom she said had become "intemperate and neglected his business wholly - and frequented houses of ill fame . . ." ⁸⁷

Individuals could also use the courts to complain of mistreatment by Anglos: for example, Antoine Paquette complained in 1831 that a man by the name of King had violently assaulted and beaten him at Gratiot's Grove, so a Justice of the Peace issued a

Public Office Appointments." Mi. 2:32, 96.

⁸⁴ Doty, "Notes on Trials and Decisions," typescript p.14, Alexis Bailly vs. Joseph Rolette, Oct. 17, 1823.

⁸⁵ U.S. v. Louis Cardinal, Iowa Series 20, folder 16, WHSL, Platteville.

⁸⁶ Michel St. Cyr vs. Benj. Boudrie, Mar. 6, 1839, filed Sept. 5, 1843, Crawford County Courthouse.

⁸⁷ Julia Antaya vs. Chrysostome Antaya,[,] Petition for divorce, Jan. 23, 1833. Crawford County Courthouse.

summons to have Mr. King brought before him (“or some other Justice”) “to answer unto the said Complaint and to be further dealt with according To Law.”⁸⁸

In 1833 Amable Moreaux sought the assistance of Creole Justice of the Peace Joseph Brisbois in a conflict with an Anglo, testifying that “he hath been threatened by Henry Sleephack . . . and is afraid that . . . Sleephack will beat or wound him, he being in fear of his life, whereupon he prayed Surety of the Peace against him.” So Brisbois ordered the sheriff to apprehend Sleephack “and bring him forthwith . . . to find surety for his personal appearance at the next county court, and in meantime to keep the peace, especially towards the said Amable Moreaux.”⁸⁹ Here Moreaux’s revenge for the insult was causing Sleephack not only to be arrested but also to have to post a surety, which might have involved finding a sympathetic member of the elite to vouch for him.

Here was another paradox: although the colonizers could use the courts to challenge the Creole elites’ authority, court cases also created power for wealthy patrons in the community who could sign surety bonds for those charged with crimes, and those who lost suits. Although some elites were challenged by way of the courts, their wealth was called upon to give surety for accused criminals, in cases for debt, and to assure the performance of many public officials, thus building their authority as patrons in the community. To illustrate, when Margaret Brousell and Joseph Desmarrais were charged with adultery in 1839, Hercules L. Dousman (an elite Creole fur trader) signed bail bonds of \$250 for each of them.⁹⁰ In addition, officials with access to public funds had to find wealthy people to sign as security for their conduct.

Furthermore, elites sometimes stepped forward to protect less powerful people against mistreatment by powerful Anglos. For example, during the mid 1820s, John Marsh, “a graduate of some Eastern college,” in the words of James Lockwood, was appointed a Justice of the Peace for Crawford County. Marsh “was in the practice of taking notes for collection, and issuing process on them,” Lockwood later remembered. When Marsh issued a controversial decision in a matter of contested identity—there being two Creoles with the name of Benjamin Roy--wealthy fur trader Hercules

⁸⁸ Iowa Series 16, #159, Miscellaneous Court Case Files, WHSL, Platteville.

⁸⁹ Crawford Series 4, County Clerk Board Papers, 7 October 1833, WHSL, Madison.

⁹⁰ *U.S. v. Margaret Brousell and U.S. v. Joseph Desmarrais*, 20 October 1839, B91, Crawford County Courthouse.

Dousman threatened to report Marsh to Governor Lewis Cass if Marsh proceeded with the case.⁹¹ Here we see a member of the Creole elite standing up to a new Anglo justice of the peace on behalf of a poorer man, an action which not only challenged the newcomers, but also once again reinforced Dousman's influence and status in the community.

Of course, disputes did not always occur along ethnic divides; Creoles might step forward to stop abuses they perceived from other Creoles. Joseph Brisbois claimed that he took the role of Justice of the Peace only to serve the community and compensate for Rolette's shortcomings. "I took the Office of Justice of the Peace against my will," Brisbois explained in a letter; "it [h]as been only when I saw that there was at the time only J. Rolette Esqr and he refused process to several persons, for reason that he was interested, or that he had no form &c—." ⁹²

Thus, the courts provided forums for airing personal grievances, mechanisms for conflict resolution, and opportunities for the enhancement of elites' power.

Indictments

Creole grand juries could assert their power, and express political views, by indicting people who would be subjected to court appearances and possible trial by judges and petit juries. As Doty told the county's first grand jury in 1824, they were "a body of public accusers," and ought to direct their attention "to every species of crime." He emphasized that, "the basis of all our civil and political institutions, is that of *equal rights*" and urged them to apply the law "*equally*, to all men, of every rank and condition." (Emphasis in original.) At least twelve of the seventeen jurors had to agree in order to generate an indictment.⁹³ Prairie du Chien's grand jurors seem to have taken this advice to heart in challenging officers of the occupying army. In two cases, grand juries seem to have expressed their disapproval of the military stationed in their community, by indicting officers--including the governor's brother--for violent behavior.

These cases should be understood in the context of the tense relationships

⁹¹ James H. Lockwood, "Early Times and Events in Wisconsin," Wisconsin Historical Collections v 2, (Madison: Wisconsin Historical Society, [1856] rept. 1903) p. 169-170.

⁹² Joseph Brisbois to Morgan L. Martin, 10 December 1832, Green Bay and PdC Papers, WHS, micro. page 144, (frame 340.)

⁹³ Brown, "Judge James Doty's Notes," pp. 31, 32, 34.

between the army and the *habitants*. Residents had endured martial law for two years by 1818, when a new court system and civil authority were established at Prairie du Chien, as Crawford County was created in the region newly transferred from Illinois Territory to Michigan Territory.⁹⁴ After the U.S. army had established Fort Crawford in Prairie du Chien in 1816, Lockwood later remembered, “the officers of the army treated the inhabitants as a conquered people, and the commandants assumed all the authority of governors of a conquered country, arraigning and trying the citizens by courts-martial, and sentencing them to ignominious punishments.”⁹⁵ For example, Charles Menard, charged with peddling alcohol to soldiers, was “tried by court-martial, whipped, and with a bottle hung to his neck, marched through the streets, with music playing the *Rogue’s March* after him.” Throughout, Menard maintained his innocence.⁹⁶ (This incident may have encouraged the *habitants’* philosophy of punishing drunks rather than vendors.)

Another man, John Shaw, remembered that Col. Chambers, when drunk, “chased a young female into the house of Jacque Menard, with no good motive for doing so,” then ordered the protesting Creole householder to be tied up and whipped by “a file of twenty-five soldiers.”⁹⁷ Shaw continued,

While the preparations were making for carrying this inhuman order into effect, a son of Nicholas Boilvin, ... some ten years of age, ran up and commenced crying and pleading in behalf of Menard, not wishing to see one of the citizens thus humiliatingly punished in public. After two or three blows were struck, Col. Chambers ordered the drummer to cease.⁹⁸

Chambers also banished Joseph Rolette to an island in the Mississippi for one winter, “for some alleged immoral conduct.”⁹⁹

Given Prairie du Chien residents’ lingering resentment at the domination of civilians by the army, it should not surprise us that as jurors, they used the new court to

⁹⁴ Scanlan, *Prairie du Chien*, p. 123. TPUS 10:803-804; Michigan Territory “Records” 1:61; Smith, *The History of Wisconsin*, v. I, p. 201.

⁹⁵ Lockwood, “Early Times and Events in Wisconsin,” pp. 128-129.

⁹⁶ Lockwood, “Early Times and Events in Wisconsin,” p. 129; similarly Keyes recorded on December 5, 1817, “A French Citizen confined and punished at the fort for selling whiskey to hirelings and soldiers contrary to orders.” Keyes, p. 356.

⁹⁷ John Shaw, “Shaw’s Narrative,” WHC 2: 229.

⁹⁸ John Shaw, “Shaw’s Narrative,” p. 230

⁹⁹ Lockwood, “Early Times and Events in Wisconsin,” p. 129.

reverse the power dynamics of the martial law era, and to assert their new ability to punish soldiers' transgressions, even to the point of insulting the territorial governor's brother.

In 1824, a grand jury indicted Governor Lewis Cass's brother, Captain Charles L. Cass of the Fifth Regiment, U.S. Infantry stationed at Prairie du Chien for assaulting Joseph Glass "in the peace of God and our said Territory ... with a certain pistol ... terrified and affrighted the said Joseph Glass ... willfully and of malice aforethought to kill and murder ... did beat bruise, illtreat, and put in bodily fear..."¹⁰⁰ According to Judge Doty's notes, Glass was in prison at the time.¹⁰¹

Similarly, the grand jury of Crawford County at Prairie du Chien on May 11, 1825 indicted Lieutenant Henry Clark, of the Fifth Regiment, "being a person of wicked and malicious disposition and not regarding the Laws of this Territory and having ... great malice hatred and ill will towards James Nevil ... with a certain large piece of wood ... from the fireplace at Brunet & Dispouses Tavern ... did beat bruise wound and ill treat so that his life was greatly despaired of ... to the great damage of the said James Nevil against the peace and dignity of the United States and of this Territory."¹⁰²

These grand juries demonstrated that they had the power to force the officers—even the brother of the governor—to answer to a panel of civilians—people whose community their army was occupying. They also used the formulaic language of indictments to insult these men. In spite of other disagreements with the *habitants*, Doty shared the view that the "military power" had no right "to bring the citizens in subjection to it."¹⁰³ Unfortunately, the extant court records do not reveal whether Clark and Cass were convicted.

Petit Juries

Of course, petit juries sometimes issued decisions with which the judges and officers of the court disagreed, as in the case of *U.S. v. Barrell*. Doty criticized not only

¹⁰⁰ U.S. vs. Charles L. Cass, 11 May 1824, WHSL 20, folder 17. The incident occurred on January 1. On Charles L. Cass as Lewis Cass's brother, Willard Carl Klunder, *Lewis Cass and the Politics of Moderation* (Kent, Ohio: Kent State University Press, 1996) p. 48, n55 (p. 326).

¹⁰¹ Doty, Notes on Trials and Decisions, Mss. DD Box 3, typescript p.22.

¹⁰² U.S. v. Henry Clarke, May 11, 1825, Iowa Series 20 folder 21, WHSL Platteville.

¹⁰³ James Duane Doty, Green Bay, to J.W. Webb, New York, 26? March 1831, Letterbook p. 136, Doty Papers, microfilm, Bentley Library, Ann Arbor.

the Barrell jury, but also another. In a civil suit between two fur traders, the jury arrived at a verdict “by making an average of the several sums proposed by each juror.” This creative solution to a problem illustrates the jury -- as a men's council --experimenting with community mediation. Although Judge Doty disapproved, he refused the motion for a new trial. He wrote, “It is with great reluctance that I give way . . . It is of doubtful utility to the public to permit the Secret of the jury room to be thus exposed. But the scandalous conduct of jurors appears to have rendered it sometimes necessary. This power of the court over the consciences of jurors (of whatever stuff they may be composed) is extremely doubtful.”¹⁰⁴

Doty was not the only Anglo to complain about Creole jurors, whose literacy and devotion to the legal system were questioned. Joseph Street, U.S. Indian Agent, wrote anxiously to the Secretary of War in 1830 after he had been sued by Jean Brunet and others for mishandling a conflict involving the army and local men who had been cutting timber on Indian lands (Street was not on the side of the locals). The population of Prairie du Chien, Street wrote, was “made up principally of ignorant Canadian French and mixed breed Indians, not one in 20 of whom can read or write. Many of these . . . know little about the law, and care less, so long as they are not made to feel its penalties. Of this motley group the jury will be made up. From such materials I cannot even hope an impartial panel can be obtained.”¹⁰⁵ A jury awarded Jean Brunet twelve hundred dollars, but the U.S. government eventually helped Street to pay part of this penalty.¹⁰⁶

Of course, as Street was painfully aware, the laws and courts regulated property, and Creole jurors made decisions affecting their neighbors' material well being. For example, when in 1833 Julia Gardipie's allegations that François St. Jean had stolen “seven yards of blue nankin” cloth resulted in the trial of *United States v. Francis St. Jean*, 11 of 12 jurors were Creole who found for St. Jean. In the process, Madame Gardipie learned that the cloth she thought was hers actually belonged to her husband due

¹⁰⁴ Doty, Notes on Trials and Decisions, typescript, pp. 91-92. Dousman vs. Bailey, Motion for a new trial, July 23, 1828.

¹⁰⁵ Joseph Street, U.S. Indian Agent, to John H. Eaton, Secretary of War, February 22, 1830, Letters Received by the Office of Indian Affairs, Prairie du Chien Agency, microfilm reel 696.

¹⁰⁶ Smith, *James Duane Doty*, pp. 74-76.

to *coverture*, and she had to allege that St. Jean had stolen the cloth from her husband, and she had to pay the court costs.¹⁰⁷

Juries had a substantial amount of power when they were asked to decide on civil suits in which there was a disagreement over debts, cases which could prove costly for either party. For a short time, a revised system was established in which juries could consist of six members instead of twelve.¹⁰⁸ When John Hammer sued Jean Brunet for debt in May of 1831, six jurors, including five Creoles decided that “John Hammer should be unsuited.” Half of the jurors signed with an X.¹⁰⁹ Later that same year, three of six jurors were Creole who were summoned to consider the case of *John Hammer v. Louis Arriandreau* for debt, with Justice of the Peace Joseph Brisbois, another Creole, presiding.¹¹⁰ Hammer lost again. His bad luck with juries continued: he was convicted and fined \$50 that year for selling liquor by small measure without a license, and in 1832 the County Court's grand jury issued four indictments against him for breaking the same laws. Convicted on one of the charges, he was fined \$100 and costs.¹¹¹ The saga of John Hammer suggests widespread disapproval of him, expressed in ways that seriously affected his pocketbook: if men like Hammer felt ethnic tension underlay unsuccessful and costly court experiences, their resentment might be expressed as complaints against Creoles.

In addition to being criticized for lack of both education and loyalty to the legal system, the *habitant* jurors were criticized on the basis of both their language skills and objectivity. To illustrate, in September of 1828, D.D. McNutt's lawyers asked for a continuance of his murder trial because “the jurors upon the present panel do not understand English—are not impartial on account of the present Indian trials.” [The reference is to the trials of Indians charged with murder in the Winnebago Revolt of

¹⁰⁷ Crawford County Clerk Board Papers 1817-1848, Box 1, Folder 2, Wisconsin Historical Society, Madison. Hammer was singularly unpopular with Prairie du Chien's County Court juries and judges. He was convicted in 1831 of selling liquor by small measure without a license, and fined \$50; the following year four indictments were issued against him for the same offense, convicted of one, and fined another \$100 and costs. Ira Brunson, pp. 6-7.

¹⁰⁸ *Acts of the Legislature of Wisconsin [Territory] passed during the Winter Session of 1837-8 and the Special Session of June, 1838, in the city of Burlington* (Burlington, Iowa: James G. Edwards, 1838) p. 167.

¹⁰⁹ Crawford County Court Records, John Hammer v. Jean Brunet, 20 May 1831, Crawford County Courthouse, Prairie du Chien.

¹¹⁰ Crawford County Court Records: Jury Summons Oct 27, 1831, Crawford County Courthouse, Prairie du Chien

¹¹¹ Brunson, "Judicial History," pp. 6-7.

1827.] Doty discounted this as a reason to postpone the trial, but granted a continuance for other reasons.¹¹² In another case, jurors seem to have been challenged based upon wealth. During July of 1829, counsel for James Brown, a soldier convicted of murder, successfully petitioned Doty for a new trial since two of the petit jurors and two of the grand jurors had worked off their tax obligations on the local highways, even though the law allowed this method of qualifying as a taxpayer in order to vote. Since the sheriff stated that he could not gather a jury who would otherwise qualify “from the inhabitants within his County,” the trial was moved to Brown County.¹¹³

It is likely that complaints like these about local judges and juries were behind the Michigan Territory Legislative Council’s decision to terminate the jurisdiction of the County Courts of Crawford, Brown, and Michilimackinac in 1828, giving all of the county court cases to Doty’s Additional Court, where the judge, at least, was committed to the letter of the laws and the dominance of territorial civil authority.¹¹⁴ By the end of the following year, all the county courts east of Lake Michigan (except that of Detroit’s Wayne County) had been deprived of jurisdiction as well, and were abolished by the spring of 1833, although the counties west of Lake Michigan had their courts restored.¹¹⁵

Still, when the Crawford County Court was restored after 1830, juries continued to thwart some of the intentions of the laws. In 1833 and 34, a case involving a defendant charged with “keeping a disorderly house” twice failed, once because a member of the jury suddenly disappeared, and when the case was bound over to the next term, a member of the jury “answered not,” so the case was dismissed. Here was the rub about petit juries: complete consensus was required, unlike grand juries, which required less than unanimity to put forward an indictment. But even grand juries sometimes avoided charging their neighbors with wrongdoing. In 1835, the grand jury found no indictments at all.¹¹⁶

¹¹² Doty, Notes, typescript 102, US vs. McNutt.

¹¹³ Doty, Notes, typescript p. 118; *Laws of the Territory of Michigan* (1874) vol. 2: 564.

¹¹⁴ *Detroit Gazette*, Aug. 21, 1828, p. 2. *Laws of the Territory of Michigan*, (1874) vol 2: 672-3; vol. 3: 843. Oddly, based on the *Gazette* and the Journal of the Legislative Council, the law canceling the county courts seems not to have been controversial: no debate was recorded and the details of the vote were not recorded. Michigan Legislative Council, *Journal of the Legislative Council of the Territory of Michigan*. 3rd Council. 1st session. 1828, pp. 65, 70.

¹¹⁵ William Wirt Blume, ed., *Transactions of the Supreme Court of the Territory of Michigan, 1825 – 1836*, (Ann Arbor: University of Michigan Press, 1940) vol. 5: 14.

¹¹⁶ Ira B. Brunson, “Judicial History,” p. 9

The U.S. attorney for Michigan Territory, Daniel LeRoy (who was not Creole), in 1833 seemed surprised at the non-cooperation of juries, and the general lack of devotion to the régime and its legal system, blaming the influence of "Indian agents, traders, [and] owners of Saw Mills in the Indian Country." Even though these men had been "placed in profitable business by the Government[.]" they seemed to demonstrate no loyalty, being "the first to oppose its interest and violate its laws." Not only were they ingrates who didn't pay for their appointments with obedience to the régime, they used their authority against it and set negative examples, encouraging the disobedience of their neighbors. "Almost the whole community on the frontiers is under their influence and very many of them Guilty of the same violations of the Laws," LeRoy lamented. "It would therefore be very rare that a Jury could be found to give a verdict of guilty even in a plain case."¹¹⁷

Although their participation as jurors was initially needed in order to implement the court system and (in Doty's words) "to inspire every one with a confidence in the laws and institutions of the country, and secure obedience to them," Creole jurors did not blindly obey the directives of judges or conform to expectations regarding process.¹¹⁸ They were often ambivalent about the laws and legal system and even resisted the laws by refusing to answer, indict, or convict those the authorities wanted punished. But they also rendered decisions that were costly to men who considered themselves better educated, more loyal and righteous, and wealthier than the *habitants*, generating efforts to reduce Creole participation in the system.

Excluding the Creoles

During demographic transitions accompanied by power struggles, as in colonization, a pattern is often evident in which much attention was focused on the "people in-between" (as scholar Jacqueline Peterson called the *métis*), and sometimes on those who were marginalized in other ways.¹¹⁹ Colonizers (when a minority) needed coalitions with Creoles in order to assert dominance over the indigenous people. Once the numbers of colonizers were great enough, the indigenous peoples removed or so

¹¹⁷ LeRoy to Lewis Cass, 1833 or 1834, quoted in Smith, *James Duane Doty*, p. 131; William Wirt Blume, ed., *Transactions of the Supreme Court of the Territory of Michigan, 1814 - 1824* (Ann Arbor: University of Michigan Press, 1938) I:21.

¹¹⁸ Brown, "Judge James Doty's Notes," p. 32.

¹¹⁹ Jacqueline Peterson, "The People In-Between."

reduced as not to pose a threat, and the institutions strong enough to maintain control, colonizers no longer needed the "people in-between". If the Creoles had been troublesome and resistant, they were edged out. This was the case with jurors in Prairie du Chien's Crawford County.

During the 1820s and 1830s, there were two major conflicts between Native and non-Native peoples resulting in violence. The 1827 Winnebago Revolt and the 1832 Black Hawk War demonstrated Native outrage and the government's incomplete control of the indigenous people. Both were put down with massive mobilizations of militia and regular troops (including Creoles as militia members, interpreters, and mediators.) By the mid 1830s, the removal of local tribes shifted the balance of power in favor of the colonizers, whose population surged in response to Indian removals.¹²⁰ (See map, Figure 3) As these shifts took place, the government would have less need for the support of the troublesome Creoles in its courtrooms.

¹²⁰ Donald Jackson, ed., *Black Hawk, An Autobiography* (Springfield, University of Illinois Press, 1955); Roger L. Nichols, *Black Hawk and the Warrior's Path* (Arlington Heights, IL: Harland Davidson, 1992); Murphy, *A Gathering of Rivers*; Michael J. Sherfy, "Narrating Black Hawk: Indian Wars, Memory, and Midwestern Identity," Ph.D. dissertation, University of Illinois, 2005.

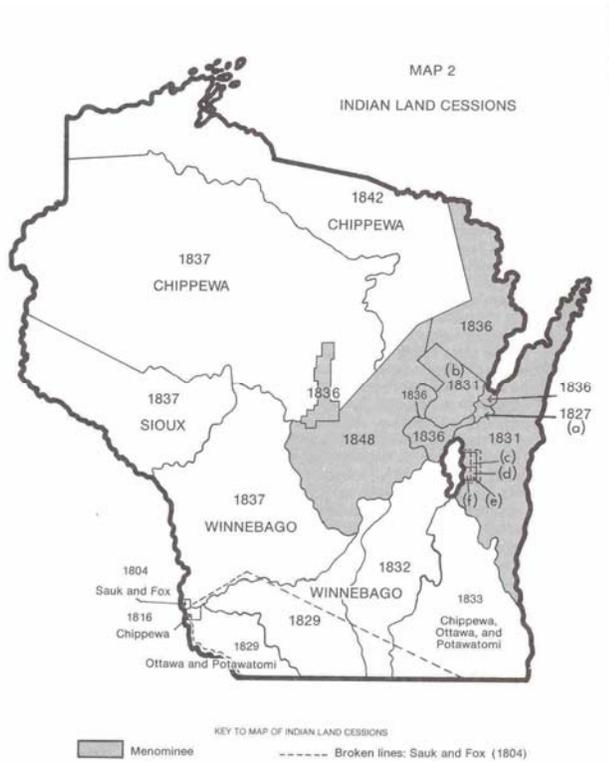


Figure 3: Wisconsin Indian Land Cessions

Source: Nancy Oestreich Lurie, *Wisconsin Indians* (Madison: State Historical Society of Wisconsin, 1980) p. 18.

**Table 2: Prairie du Chien
Creole Proportion of the Population**

	French Surname
1817: Men identified by name in sources: n=60/72	83.3%
1820: Household heads, U.S. Census: n=39/53	73.5%
1830: Household heads, U.S. Census: n=45/62	72.6%
1836: Household heads, Wisc. Census, County n=79/157	50.3%
1840: Household heads, U.S. Census, County n=63/187	33.7%
1850: All residents (Creoles*) n=425/1406	30.2%
1860: All residents (Creoles*) n=380/2,398	15.8%

* "Creoles" includes residents with French surnames who were born in Wisconsin, Michigan, Minnesota, Missouri, Illinois, or Canada before 1820, and their children and/or those who were known from genealogical and treaty records to be members of fur trade families. Data for the years before 1850 were for those with French surnames.

Sources: James L. Hansen, "Prairie du Chien's Earliest Church Records, 1817," Minnesota Genealogical Journal IV (1985), 329-342; James H. Lockwood, "Early Times and Events in Wisconsin," State Historical Society of Wisconsin, Collections, vol. 2 (1856), 125-126; M.M. Hoffmann, Antique Dubuque, 1673-1833 (Dubuque, Iowa, 1930), 51-59; U.S. Congress, American State Papers: Documents, Legislative and Executive, of the Congress of the United States..., 38 vols. (Washington, D.C., 1832-1861), Class VIII, Public Lands, 8 vols., ed. Walter Lowrie et al., V, 47-98, 270-272, 283-328; Donna Valley Russell, ed., Michigan Censuses 1710-1830 (Detroit: Detroit Society for Genealogical Research, Inc. 1982) 146-147; Elizabeth Taft Harlan, Minnie Dubbs Millbrook and Elizabeth Case Erwin, transcribers & eds., 1830 Federal Census: Territory of Michigan (Detroit: Detroit Society for Genealogical Research, 1961); [C.W. Butterfield,] History of Crawford and Richland Counties, Wisconsin (Springfield, Illinois: Union Publishing Company, 1884) I: 294-295; Sixth Census of the U.S., 1840 manuscript, Crawford County, WI, microfilm; Seventh Census of the U.S., 1850 manuscript, Crawford County, WI, microfilm; U.S. Census Office, Population of the United States in 1860; Population (Washington, GPO, 1864) p. 534 and manuscript, Crawford County, WI, microfilm.

So as the influx of newcomers changed the population balance, Anglo colonizers limited Creole jury participation. It is possible to track jury participation over time, and compare it to population change. After 1839, the Creole participation rate was low, even relative to their proportion of the population. (See Graph 1)

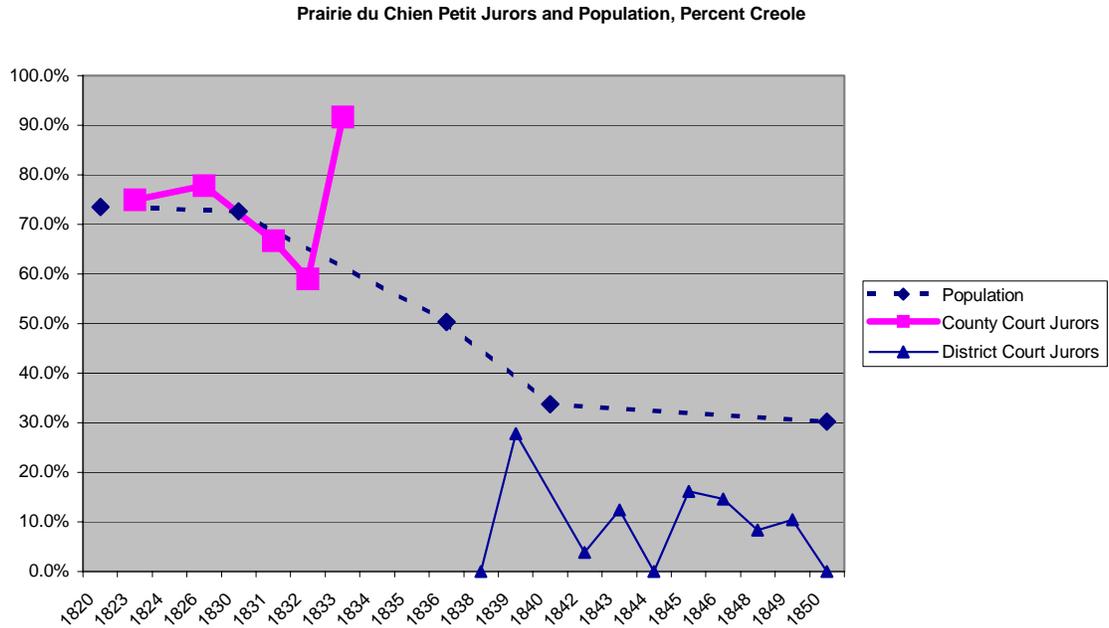
There were four ways that Creoles were excluded. First, county officials selecting

men to summon for jury service excluded many Creoles from the lists. This was an effective way to minimize, if not eliminate, Creole participation.

By 1838, the Creole population dipped below 50% due both to massive immigration of Anglo-Yankees and others and a smaller trend of Creole out-migration. (See Table 2). The social and economic implications of this demographic change were enormous; the political implications were predictable given the territorial implementation of a democratic electoral system emphasizing majority rule (but excluding Indians, African Americans, and "white" women from the electorate). The proportion of Creoles among both elective and appointive officials declined after 1836. In 1845, for example, only 11.2% of county officials were Creole.¹²¹ Most relevant to the selection of jurors, fewer and fewer Creoles were elected as Supervisors and Assessors, the officials charged with nominating men to serve on juries. Thus, although petit juries between 1823 and 1833 had been between 59% and 92% Creole, after 1838 they constituted less than 21% of the potential jurors, that is, those whose names were recommended by the Commissioners, Supervisors, and Assessors to serve as jurors. (See Table 2 and Graphs 1 and 2.) (However, bystanders were often impaneled to substitute for absentees, so men who had been left off the venire lists might still be drafted to serve.)

¹²¹ In 1825, of the men mentioned in the Crawford County Commissioners minutes as serving in official roles, six out of eleven were Creole. In 1835, four out of six men named in that source were Creole, some of them serving in several different capacities. By 1845, however, 55 Anglos and seven Creoles were recorded as serving in 17 official roles for the county government. "Crawford County Supervisors," pp. 9-12, 35-37, 181-208.

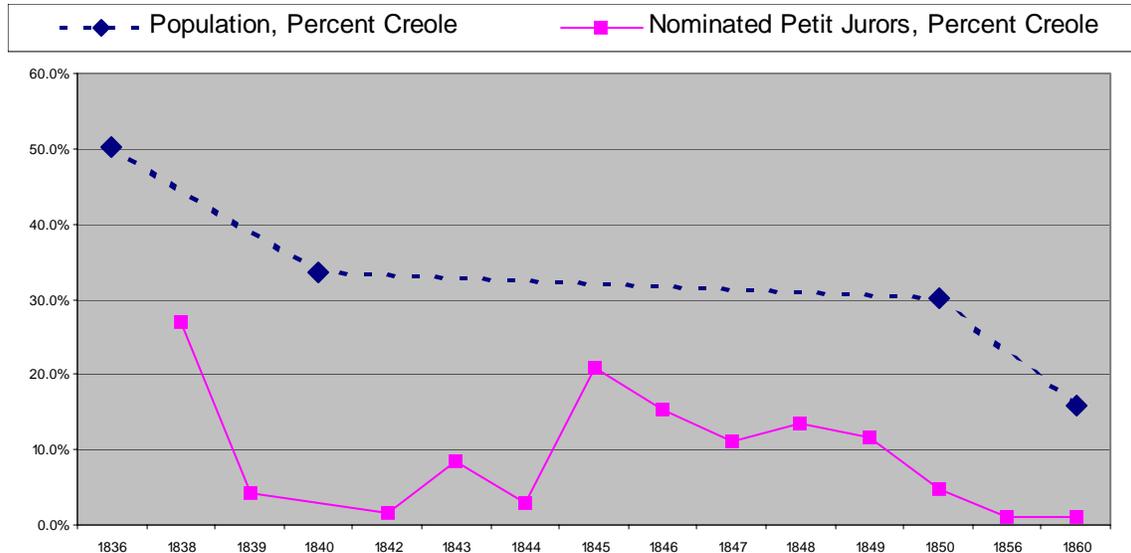
Graph 1¹²²: Prairie du Chien Petit Jurors and Population,
Percent Creole, 1820 - 1850



¹²² When Wisconsin Territory was formed out of Michigan Territory in 1836, the County Court system was replaced with a territorial District Court system. Sources for Graph 1: Jurors: 1823, 1824, 1826 and some of 1838 from Brunson, "Judicial History;" 1831, 1833, and some 1838 data are from sample cases, Crawford County Courthouse, (less complete than the other data); 1832 data is from Crawford County Courthouse, "Book A" 1830 - 32, 2 cases; Other data on petit juries is from "Crawford County Supervisors," [minutes] vol. 1: 120-124, 138-130; 139, 147, 187; vol. 2: 12, 31, 49, 84-86, 97, [146], 114, 159, 162, 170, 194, 223-224, 250, 271-72, 336-338, 360, 372-373; vol. 3: 7-8, 17, 28-29, 33, 37, 50-52. For population data, see Table 2.

Graph 2: ¹²³

Nominated Petit Jurors and Population, 1836 - 1860



Second, as petit juries were impaneled in court for a specific case, men could be dismissed based upon the challenges of either party. Two could be dismissed without giving a reason; others could be challenged based upon language competency, prejudice, having an interest in the outcome, or being related to those involved in the case.¹²⁴

Third, Creoles were excluded from Additional Circuit Court juries by moving the court's meeting place to a town with a largely Anglo population. In order to shift authority from Creole to "American" jurors, the Additional Circuit court was moved to a different location. Doty wrote in a letter to Congressman William G. Angel of New York in March of 1830, "in the month of October last, the County of Crawford was divided by an act of the Legislative council. I do not think there is a sufficient number of

¹²³ For population data, see Table 2; for jury nominees, "Crawford County Supervisors," except 1856, 1860, from "Journal A, 1849 - 65, Crawford County Supervisors Meetings minutes," pp. 182 - 185, Fort Crawford Museum archives.

¹²⁴ *Laws of the Territory of Michigan* (1874) vol. 2: 467-470.

Inhabitants, within the boundaries of that county at present, who are American citizens and who understand the English language, to form the juries required by law. The term of the court heretofore fixed at Prairie du Chien should be transferred to the new County of Iowa *which is settled by Americans*, and be held in the month of October next.”¹²⁵ (Emphasis added.)

Doty probably exaggerated the scarcity of qualified jurors. Language did not have to be an issue, as interpreters had been used in the local courts for years. The 1827 law about juries *allowed* challenges based upon language competency, but did not *require* that jurors be fluent in English; the revised 1828 law did not mention language as a cause for challenge at all.¹²⁶ (Oddly enough, an 1816 Michigan Territorial law provided that juries might be designated as “*juries de mediatate linguae*” based on an old English legal tradition allowing juries to be split evenly between people who held different citizenship or ethnicities. This provision seems to have been used in early Michigan Supreme Court cases involving suits between merchants who were U.S. and Canadian citizens, and was not used specifically with regard to language.)¹²⁷ This practice was evidently not used in Prairie du Chien, but could have been.

Furthermore, there seem to have been enough men available to serve on juries. Territorial laws recommended that the fifteen grand jurors and twelve petit jurors needed for a court meeting be selected at random from a list of over one hundred qualified nominees, or “such number as can be found competent.”¹²⁸ Although it did not note how many were citizens, the 1830 Census for Crawford County had counted 62 household heads, and 188 non-military “white” men, aged twenty and up. (Men of mixed Native and European ancestry were considered “white” for the purposes of voting, as long as they were not tribal members.) However, 89 of them were listed in the household of Joseph Rolette, the man Doty was politically organizing to defeat.¹²⁹ Although most of

¹²⁵ Doty to William G. Angel, 7 March 1830, TPUS 12:142.

¹²⁶ *Laws of the Territory of Michigan* (1874) vol. 2: pp. 467-470; 653-657.

¹²⁷ *Some of the Acts of the Territory of Michigan with the titles and a Digest of all the Acts of the Said Territory; Now in Force*, March 20th, 1816 (Detroit: Printed by Theophilus Mettez, 1816) Possibly known as the “Cass Code,” p. 100; Blume, *Supreme Court of Michigan I*: 57-58, 116, 118, 357-358, 359, 469.

¹²⁸ *Laws of the Territory of Michigan*, vol. 2 (1874) pp. 467, 653.

¹²⁹ *Fifth Census or, Enumeration of the Inhabitants of the United States, 1830* (Washington: Duff Green, 1832) pp. 152-53; Elizabeth Taft Harlan, Minnie Dubbs Millbrook and Elizabeth Case Erwin, transcribers & eds., *1830 Federal Census: Territory of Michigan* (Detroit: Detroit Society for Genealogical Research, 1961), pp. 98-99.

the 89 were probably employed in the fur trade in remote locations, some of Rolette's men were likely locally-born Creoles who could have qualified, especially for trials held in the summer months when many men were home between wintering expeditions. Out of the 99 remaining men, some might have been disqualified for not being citizens, but an 1827 statute allowed men who worked off their tax burdens on the local roads to be considered taxpayers. Certainly three or four dozen men could have qualified as jurors there.

In any case, there were ways to ensure that jurors would be available. In 1828, Governor Cass had felt that there was an urgent need to move forward with the trial of Ho-Chunk Indians arrested for attacking the Gagnier family the previous summer during the Winnebago Revolt, writing to Secretary of War James Barbour,

It is highly important to the peace and security of that frontier that this flagrant outrage should not pass unpunished, and the conviction of the prisoners is not less essential to the objects of justice than it is to our influence with the Indians of that region. They of course know nothing of the machinery of courts, nor can they comprehend, why those prisoners were not killed as soon as they were surrendered for that purpose. If they are acquitted the result will be attributed wholly to fear on our part and the consequences may be most afflicting to that whole country.¹³⁰

Cass requested that the federal government support some of the costs of prosecuting the Ho-Chunks, and explained some of the difficulties of conducting trials in Prairie du Chien. "The whole country contains but about 450 inhabitants, men, women & Children, and but a small part of these is competent to serve upon Juries. There is no publick prosecutor for the compensation is so inadequate, that no one will accept the office."¹³¹

So Cass arranged for the Legislative Council of Michigan Territory to pass a law authorizing a special session of Doty's Additional Circuit Court to be held beginning August 25, 1828 at Prairie du Chien, and stipulating that qualifications for jurors might be more lenient than the laws otherwise prescribed. Grand and petit jurors were to be "free white males" who had resided in the territory for one year; no citizenship nor taxpayer status was required. Furthermore, "if any juror . . . does not possess a full

¹³⁰ Lewis Cass, Detroit, to James Barbour, Secretary of War, 7 January 1828, Cass papers, microfilm, Bentley Library, Reel 58.

¹³¹ Cass to Barbour, 7 January 1828.

knowledge of the English language, he shall not be discharged for such cause alone.”¹³² Cass got the convictions he wanted--Chickhongsic and Waniga were sentenced to be hanged—but President John Quincy Adams pardoned them.¹³³ Nevertheless, this series of events demonstrates that government officials such as Cass accepted Creole juries to try crimes in Prairie du Chien in order to establish the government's authority over Indians, even if they were uncomfortable having Creole jurors assert authority over "Americans."

After the region's Additional Court was moved to the lead mining district's Iowa County, few Creoles served on that court's juries. For example, during two regular sessions of the court and one special session in 1834 and 1835, the only French names among 54 grand jurors were Pascal Bequette and Pierre Teller. There was not one Creole on any of the petit juries that decided twenty cases, although four of the trials involved Creoles and one concerned an Indian accused of murder. Forty-three non-Creole men served on those petit juries, and another twenty non-Creole men were called but were not needed for the special session.¹³⁴

Meanwhile, back in Prairie du Chien, juries were still needed for some of the County and Justices' courts, but the process of minimizing the jury participation of the *habitants* there took a new tack.

Exclusion by language

A fourth way to marginalize the Creoles was through the issue of language. In the early years of the court system, Francophones participated freely in the courts system, and certain bilingual Creoles were recruited to serve as interpreters of French, English, and Indian languages.¹³⁵ They were paid for their services. But, in the 1838 trial of Chequweyscum, an Ojibwe accused of murdering a fur trader who had alienated the affection of his wife, two Anglo attorneys were appointed for the defendant, and, according to a former judge, "The parties agreed to have none on the Jury except those who could understand the English language," even though three interpreters who spoke

¹³² *History of Crawford and Richland Counties*, pp. 374-75.

¹³³ *History of Crawford and Richland Counties*, p. 374.

¹³⁴ Journal 1834-36, Circuit Court of the United States for the Counties of Crawford and Iowa, typescript copy, William W. Blume Papers, Bentley Historical Library, University of Michigan, Ann Arbor.

¹³⁵ "Crawford County Supervisors," 148/171; 2:6/91; 2:191/193; 2:259/227.

French and Ojibwe languages (and presumably English) were employed for the trial.¹³⁶ It is interesting that, although the law had allowed jurors to be challenged on the basis of language competency before, it was apparently not until this case that the court chose to use this provision to exclude Creoles from the jury box.¹³⁷

Why did this change in 1838? Creoles had become a minority, and there were enough Anglos to fill the jury venire lists. So, there was no need to tolerate the independence of Creole juries or to be hampered by translations. Wisconsin had become a territory in its own right in 1836, and the new circuit court judge for Crawford County, Charles Dunn, may have had his own preferences.¹³⁸

Unlike the situation in 1828 when Cass needed the Creoles to help control the Ho-Chunk Indians by demonstrating a willingness to convict and punish those who attacked non-Natives on the frontier, this Indian could be tried without Creole assistance. By this time, eleven years after the Winnebago Revolt and six years after the Black Hawk War, the government did not need Creoles as allies in controlling Indians. (However, after the case was carried over to the next term, the non-Creole jury deliberated for two days and declared Chequeweyscum not guilty.¹³⁹)

Ironically, in spite of the exclusion of jurors deemed to be problematic, this trial does not seem to have been the model of propriety. One of the Anglo jurors who served for this case, John H. Fonda, left a memoir in which he recalled that during recesses, the jurors "were locked up in a grocery, where, for the sum of seventy-five cents each, we could have all the liquor we wanted." Not only the jurors, but also the judge and lawyers, drank to excess according to Fonda, and "the prisoner was the only sober man in the court room."¹⁴⁰ The issue of alcohol consumption had certainly taken a new turn here.

The change in policy regarding language competency and jury participation seemed to stick. So when Pierre Barrette sued Pierre Lachapelle in April of 1838 over a land conflict, François Gauthier was brought in to be an interpreter, and the twelve jurors

¹³⁶ Brunson, "Judicial History," p. 11; *History of Crawford and Richland Counties*, p. 381.

¹³⁷ Brunson, "Judicial History," p. 1.

¹³⁸ *History of Crawford and Richland Counties*, 380, 382.

¹³⁹ Ira Brunson, "Judicial History," p. 11

¹⁴⁰ *History of Crawford and Richland Counties*, p. 381.

did not include one Creole.¹⁴¹

New legislation and policies at the territorial and county levels supported the exclusion from the courts of those not fluent in English. After the Territory of Wisconsin was created, an 1839 law required that “all writs, process, proceedings and records in any court shall be in the English language.”¹⁴² In 1849, the Crawford County Board of Commissioners began rejecting the invoices of interpreters.¹⁴³ The following year the Board decided that “no money heretofore be appropriated to any person or persons for Services rendered as Interpreters before any court held in the County of Crawford Wisconsin except in State cases.”¹⁴⁴ After this, the burden was on those who did not speak English to find assistance with translation.

Yet, a few Creoles continued to serve on juries, presumably men who were both fluent in English and convinced that this was their civic duty. That year, 1839, although only one of 23 prospective petit jurors selected by the County supervisors was Creole, five Creoles were among the eighteen who actually served, four of them apparently standing in for absentees.¹⁴⁵ Between 1842 and 1850, Creole jurors in the District Court of Crawford County ranged from 0% to 16.1%.¹⁴⁶

A handful of Creoles could sometimes be found on the juries at mid-century: men like George P. Brisbois (brother of the politically-active Joseph) and François Labathe, a French and Dakota man who had served on Prairie du Chien juries since 1824. They were multi-lingual members of the old fur trade families. Out of ten who served in November of 1849 and appeared in the 1850 census, seven were farmers, one a fiddler, one a tavern keeper, and one was still involved in the fur trade. We may assume that all understood the English language reasonably well; at least two had translated Indian languages for the court before the practice ceased being valued enough to record in the Supervisors'

¹⁴¹ Crawford County records: Pierre Barrette v. Pierre Lachapelle, 1 April 1838, Crawford County Courthouse, Prairie du Chien.

¹⁴² *Statutes of the Territory of Wisconsin* (1839), p. 200.

¹⁴³ “Crawford County Supervisors,” 3:15/286; 3:44/302.

¹⁴⁴ “Crawford County Supervisors,” 3:50/305.

¹⁴⁵ “Crawford County Supervisors,” 1:139; 1:147.

¹⁴⁶ “Crawford County Supervisors,” pp. 104, 124-127, 133 - 135, 141, 146, 177, 195, 222-223, 270-271, 287-290, 296-298; N = 1842: 1/26; 1843: 14/105; 1844: 0/44; 1845: 5/31; 1846: 6/41; 1847 (no data); 1848: 3/36; 1849: 15/144; 1850: 0/14. Data for 1842 and 1843 includes both grand jurors and petit jurors because the Supervisors' records did not differentiate. In 1844 the number of jurors included petit and grand jurors for the District court and five for the Justice of the Peace court. Clearly some of the juror lists were incomplete, probably because some did not submit their documents to be paid in a timely fashion.

minutes. At least six had Native ancestry and most of their wives were also Native-descended.¹⁴⁷

The Creole jurors of the 1820s through 1850s were members of families and communities with strong ties to Native culture, values, and political traditions. Whether they themselves were Native or not, their households and neighborhoods included many who had been raised by Native parents. The jurors had spent time in Indian villages as part of their work in the fur trade, and had witnessed and even participated in many councils and gatherings, in which members took care to hear all sides and then took action that they believed was in the best interest of the community. Sometimes their action as jurors protested the behavior of an army officer, contradicted the details of a judge's instructions, or failed to punish someone for violating a law they disagreed with. The Yankee court and jury system had offered opportunities for them to address community problems as a men's council.

Conclusion

Paradoxically, the new judicial system was both harsh and inviting. Appointed by the President, officials of Michigan Territory used the courts as an instrument of colonization to assert the authority of the U.S., to impose the laws, and to secure from the inhabitants participation and acknowledgement of the colonizers' power and the legitimacy of the new institutions. But even as the courts provided a site where men like Doty denounced them, their relationships, and their Indian kin, and where the colonizers sought to implement the laws designed to control them, there was room for some Creoles, including those who were Native-descended, in the new *régime*.

Early on, Creoles were included in large numbers because their participation and their support were needed for the U.S. to establish and maintain power in the region. As

¹⁴⁷ "Crawford County Supervisors," 3:7-8, 17. *Seventh Census of the U.S., 1850*, manuscript, Crawford County, WI; James L. Hansen, "Crawford County, Wisconsin, Marriages, 1816-1848," *Minnesota Genealogical Journal*, (May 1984); 40, 41, 42, 45, 47; Les and Jeanne Rentmeester, *Wisconsin Creoles*, p.190, 240-41; 281-82, 288, 320, 333-34; Hansen, "A Roll of Sioux Mixed Bloods, 1855-56" *Minnesota Genealogical Journal*, v. 7 (Nov. 1987) p. 11; : James L. Hansen, "Prairie du Chien's Earliest Church Records, 1817," *Minnesota Genealogical Journal* 4 (November 1985): p. 3, 5; James L. Hansen, "Crawford County, Wisconsin, Marriages, 1816-1848," p. 43; "Baptismal Records from Little Chute 1839," typescript, Peter L. Scanlan Papers, WHS Platteville MssD, Box 7, Folder 1, p. 2, 3, 4; "Prairie du Chien and Galena Church Records," *Minnesota Genealogical Journal*, v. 5 (May 1986) p. 424, 435, 438, p. 3; Forsyth, "Half-Breed" lists.

we have seen, some of them protested actively or passively, but enough took part to help establish the new regime. Eventually, many of them learned to use the system to settle disputes or gain justice. In some cases, elite Creoles such as wealthy trader Hercules Dousman influenced power relations in the system, posting bail or bonds for people in trouble with the court, or threatening a justice of the peace who was out of line, while enhancing their own authority. Furthermore, as jurors they could sit in judgment of their non-Creole neighbors in a forum where unanimity was required for a decision to be made. In addition, Anglo prejudice during this time period ran deep and it may have been difficult for many to accept the Creoles as their peers, especially if interpreters were needed to dispense justice.

So, when the proportion of Creoles in the population dropped, their influence declined. By the mid-1830s, sufficient Anglo immigration made it possible for the colonizers to marginalize most of the old *habitants*. Thereafter territorial and local officials reduced Creoles' participation in the courts by manipulating the structure and location of the county and circuit courts, and by excluding them from juries.

Some Creoles continued to participate. Some stepped forward to serve as jurors, even when they were not summoned, filling the spots of absentees. If some of the courts' actions, such as prosecutions for adultery and fornication, forced Creoles to submit to government control in the institutional regulations of their domestic affairs, the courts also lured the old residents into participation and thus tacit acknowledgment of the legitimacy of the new regime.

In the early years, because the colonizers—judges, local Anglo officials, the territorial governor, and members of the territorial legislative council—needed Creole support and participation, they tolerated Creoles' unfamiliarity with the system, inability to speak English, protests, and assertiveness and non-compliance as jurors (although at the same time, many officials complained bitterly). Because the new institutions required Creoles participation in order to function, they exerted some agency in these roles. They were sometimes able to protect neighbors from powerful people (Yankee or Creole) or against aspects of the new institutions that seemed harsh or unjust. Creoles as jurors and as other participants in the court system were sometimes able to use it for protection or to effect their own concepts of justice, agendas separate from the objectives of officials like

Doty and Cass who used the courts not only to resolve disputes and punish the wicked but also to establish the power of the United States and its territorial and state governments in Wisconsin.

After the *habitants* became a minority and Native tribes were removed or pacified, Creoles were increasingly excluded from the courts. Their support, as “people in-between,” was no longer needed to maintain Anglo control.
